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U. S. NAVAL WAR COLLEGE.

INTERNATIONAL LAW TOPICS AND DISCUSSIONS.

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PREFACE.

Changed conditions in war upon the sea continually introduce new problems in international law as in other branches with which a naval officer is expected to be familiar. The Naval War College has planned from year to year to consider some of these problems. The topics for discussion in 1906 were formulated by the lecturer on international law, Mr. George Grafton Wilson, professor in Brown University, in consultation with the president and staff of the Naval War College, and these together with the officers in attendance at the Conference of 1906 considered and discussed the topics as fully as the limited time permitted. The course followed in the Conference was that described in the preface to the volume for the year 1905. The conclusions are those accepted by a majority of the Conference, and have a value corresponding to the thoroughness of its methods and the experience of its members.

This summary of the discussions, prepared by Professor Wilson, is published for the information of the naval service.

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U. S. NAVAL WAR COLLEGE,
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INTERNATIONAL LAW TOPICS AND DISCUSSIONS.

Topic I.

What regulations should be made in regard to the use of false colors by public vessels in war?

CONCLUSION.

1. The use of false colors by public vessels in war is prohibited.
2. When a public belligerent vessel summons a vessel to lie to, or before firing a gun and during action, the national colors shall be displayed.
3. Any vessel not showing her colors in response to a summoning gun may be considered and treated as an enemy.

DISCUSSION AND NOTES.

Reasons for discussion.—The present regulations in regard to the use of false colors by belligerent vessels in time of war are generally understood to permit the use of false colors before firing a gun. These regulations are an inheritance from an early time. These rules were formulated in the days of wooden sailing vessels and short-range guns. While the rules of war have changed in many respects, these rules have remained unchanged and have received a general adherence. These rules were originally recognized at a time when neutral rights were little considered and the use of a neutral flag by a belligerent would be regarded as a matter with which the neutral party had little concern. Indeed, it was often questioned whether the neutral had any rights which the belligerent was bound to respect.

The war vessel of early days was also very different from that of to-day. The approach of the slow sailing

vessel of the seventeenth century would allow time to determine its identity in most instances and to provide for action in case of mistake. A single shot from a gun of the early type into a vessel of its day would not, in general, have an effect corresponding to that of a shot sent into the complicated mechanism of a modern war vessel. The fighting in the period before the middle of the nineteenth century was at much shorter range, and time and space played a very different part in determining the issue of the conflict. Surprise was not, in early conditions, a matter of gravest importance. In the old days the contests were relatively long. In modern battles the first shot or those following soon after seem to have been very often the decisive ones.

The risk from permitting the use of false colors is far greater than formerly, so it would seem that the protection against the risk should be correspondingly developed.

False colors in land warfare.—The use of false colors on land and the toleration of other forms of deceit was formerly common, but at present in land warfare false colors are forbidden. The regulations are similar to the following:

Instructions United States Army, 1863, Article 65—

The use of the enemy's national standard, flag, or other emblem of nationality, for the purpose of deceiving the enemy in battle, is an act of perfidy by which they lose all claim to the protection of the laws of war.

Brussels Rules, 1874, articles 12, 13:

Art. 12. The laws of war do not allow to belligerents an unlimited power as to choice of means of injuring the enemy.

Art. 13. According to this principle are strictly forbidden—

(*f*) Abuse of the flag of truce, the national flag, or the military insignia or uniform of the enemy, as well as the distinctive badges of the Geneva Convention.

Oxford Manual, 1880, section 8:

It is forbidden—

(*d*) To make improper use of the national flag, of signs of military rank, or of the uniform of the enemy, of a flag of truce, or the protective marks prescribed by the Convention of Geneva.

Hague Convention, Laws and Customs of War on Land, 1899, Article XXIII:

Besides the prohibitions provided by special conventions, it is especially prohibited—

(*f*) To make improper use of a flag of truce, the national flag, or military ensigns and the enemy's uniform, as well as the distinctive badges of the Geneva Convention.

It has come to be generally accepted that "deceit involving perfidy should be forbidden."

The flag is the emblem held most esteemed and sacred among states. It is the usual method of showing allegiance and is to be raised only on sufficient authority.

The use of false colors on land or similar perfidy deprives the users of the "claim to the protection of the laws of war."

There has not been a similar restriction of the use of false colors on the sea, nor is there at present a unanimity of opinion in regard to the practice, as shown in various authorities.

French attitude toward the use of false colors at sea.— There have been many expressions in regard to the use of false colors showing the French point of view.

One of the earliest provisions in regard to the use of false colors at sea is that of France in the ordinance of March 17, 1696:

Sa Majesté a ordonné et ordonne que tous les capitaines commandant ses vaisseaux ou ceux armés en course par ses sujets, seront tenus d'arborer le pavillon français avant de tirer le coup d'assurance ou de semonce. Défenses très expresses leur sont faites de tirer sous pavillon étranger à peine d'être privés, eux et leurs armateurs, de tout le provenu de la prise, qui sera confisqué au profit de Sa Majesté, si le vaisseau est jugé ennemi, et en cas que le vaisseau soit jugé neutre, les capitaines et armateurs seront condamnés aux dépens, dommages et intérêts des propriétaires.

A French ordinance of May 22, 1803, provides that the French flag shall be displayed before the first shot is discharged at the enemy. The decree of August 15, 1851, is as follows:

Avant de commencer l'action, le commandant en chef fait arborer les marques distinctives et hisser les pavillons français sur tous les bâtiments. Dans aucun cas, il ne doit combattre

sous un autre pavillon. Dans les combats de nuit, il ordonne qu'un fanal soit placé au-dessus du pavillon de poupe.

Ortolan says:

C'est ainsi que dans les guerres maritimes on peut, sans forfaire à l'honneur, attirer son ennemi au combat ou échapper à un ennemi supérieur en hissant un faux pavillon; mais c'est un acte réprouvé de commencer ou de continuer le combat sous un pavillon autre que le sien. Cet acte est puni par les ordonnances françaises. Anciennement il était même défendu de tirer le coup de canon à poudre, appelé *coup de canon de semonce*, sous un pavillon étranger. (2 Diplomatie de la mer, p. 29.)

De Cussy maintains that—

Le combat sous pavillon étranger est un acte de félonie; il est réputé acte de *piraterie;* ce serait vainement qu'on voudrait faire envisager *comme une ruse permise* pour surprendre l'ennemi, de s'être avancé vers lui, couvert d'un pavillon ami.

Si, dans certaines circonstances, *la ruse est licite*, c'est uniquement, quand elle ne blesse ni l'honneur ni la morale.

Masquer son *dessein d'attaque* sous un pavillon ami, afin d'écarter toute défiance du côté du bâtiment qu'il s'agit d'approcher, est une action qu'aucun commandant de bâtiment de guerre ne voudrait, de nos jours, se permettre; sa dignité personnelle, la dignité de son pays, l'honneur militaire s'opposeraient non pas seulement à la mise en œuvre d'un semblable moyen, mais même à ce que la pensée pût s'en présenter à son esprit. (I Phases et causes célèbres du droit maritime, p. 257, sec. 25.)

The use of the uniform of the enemy for purposes of deceit is generally condemned. Pradier-Fodéré says:

Les considérations qui devraient faire regarder comme illicite l'usurpation de l'uniforme de l'ennemi s'appliquent, à plus forte raison, à l'usurpation de son drapeau. Je dis *à plus forte raison*, parce que le drapeau est le signe traditionnel qui représente plus particulièrement la nation, est l'affirmation la plus respectable de la nationalité, et qu'arborer un faux drapeau c'est faire une affirmation fausse, dont le résultat peut être de rendre plus atroces les horreurs de la guerre en supprimant la confiance qui en modère les rigeurs. D'accord avec plusieurs auteurs et avec la pratique, Bluntschli enseigne cependant qu'il n'est pas contraire au droit international de tromper l'ennemi en faisant usage de son drapeau, de son pavillon, pourvu qu'avant d'en venir aux mains chaque corps de troupes, chaque navire, arbore ses couleurs. Je conviens qu'il est plus facile d'arborer un drapeau au moment d'ouvrir le feu que de changer d'uniforme. Ortolan dit que dans les guerres maritimes on peut, sans forfaire à l'honneur, attirer son ennemi au combat, ou échapper à un ennemi

supérieur, en hissant un faux pavillon, mais que c'est un acte réprouvé de commencer ou de continuer le combat sous un pavillon autre que le sien. Il rappelle que cet acte est interdit par les ordonnances françaises; qu'anciennement il était même défendu de tirer le coup de canon à poudre, appelé *coup de canon de semonce*, sous un pavillon étranger; que la loi française, depuis, a ordonné seulement d'arborer le pavillon national avant de tirer à boulet sur l'ennemi; qu'avant de commencer l'action, le commandant en chef doit faire arborer les marques distinctives et hisser le pavillon français sur tous les bâtiments, et que dans aucun cas il ne doit combattre sous un autre pavillon. Que l'échange d'un coup de canon à blanc ou à boulet perdu, suivi du fait d'arborer le vrai pavillon, entre deux navires de guerre se rencontrant en mer, soit l'équivalent de la parole d'honneur des commandants qu'ils se présentent sous leurs véritables couleurs, il n'y a rien à reprendre dans ce cérémonial; mais il faut convenir qu'il serait préferable que sous aucun prétexte les belligérants n'usurpassent les drapeaux et pavillons d'autrui. (6 Droit international public, sec. 2760, p. 958.)

Pillet says in a note upon the use of false colors:

Il est à peine besoin de noter que cette règle absolue de loyauté n'interdit pas seulement d'arborer un faux pavillon au moment d'un combat naval. Elle interdit tout acte d'hostilité sous un pavillon emprunté; ainsi le fait de déguiser sa nationalité pour tenter un débarquement, ou pour franchir une passe défendue par des batteries à l'effet de procéder à un bombardement. Tout acte d'hostilité proprement dite doit être accompli par un navire sous ses véritables couleurs. Cette irrégularité ne saurait être admise même à titre de représailles. (Les lois actuelles de la guerre, n. 2, sec. 70 bis.)

Pillet also maintains that—

On peut par l'emploi d'un faux pavillon essayer de se soustraire à la poursuite de l'ennemi, peut-être même de forcer un blocus; mais il est absolument interdit par les règlements, aussi bien que par les usages de la guerre, de combattre sous un faux pavillon; toute infraction à cette règle serait inexcusable, même en cas de nécessité des plus pressantes. (Les lois actuelles de la guerre, sec. 70 bis.)

Rosse says:

Le droit des gens autorise, en temps de guerre, pour se soustraire aux poursuites de l'ennemi, l'emploi d'un pavillon supposé; mais il l'interdit rigoureusement comme moyen d'attaque ou de surprise.

Dès que le feu est ouvert, l'usage invariable des peuples civilisés veut que chaque navire établisse loyalement sa nationalité et

combattre sous ses propres couleurs. (Guide international du commandant du bâtiment de guerre, p. 112.)

Other opinions.—Calvo sets forth his opinion as follows:

Le droit des gens autorise en temps de guerre pour se soustraire aux poursuites de l'ennemi l'emploi d'un pavillon supposé; mais il l'interdit rigoureusement comme moyen d'attaque ou de surprise. Dès que le feu est ouvert, l'usage invariable des peuples civilisés veut que chaque navire établisse loyalement sa nationalité et combatte sous ses propres couleurs. Le fait de combattre sous pavillon étranger est une violation du droit des gens, qui fait considérer et traiter comme pirates ceux qui s'en rendent coupables. (4 Le droit international, sec. 2124.)

Glass gives the following statement of the general principle in regard to stratagems:

But while we are bound to hold sacred all promises to an enemy, and keep all engagements, expressed or implied, we may take any advantage of an enemy possible by stratagem or surprise without perfidy; indeed, to make use of such means is highly commendable. On this account the circulation of any intelligence calculated to deceive an enemy is allowable.

A vessel may hoist false colors to decoy an enemy within range of her guns, but to make signals of distress for such a purpose would be an act of the greatest perfidy. (Marine International Law, p. 392.)

Halleck says of the rule in regard to the affirming gun:

The ancient rule of maritime law, as stated by Valin, was that the *affirming gun* (*coup de semonce, ou d'assurance*) could be fired only under the national flag. Such were the provisions of the ancient ordinances of France. But article 33 of the Arrêté du 2 Prairial merely prohibited the firing a shot (*tirer à boulet*) under a false flag, and the law of April 10, 1825, article 3, provided that captains and officers who *commit acts of hostility* under a flag other than that of the state by which they are commissioned, shall be treated as pirates. Ortolan says that the affirming gun may be fired under false colors, but all acts of hostility must be under the national flag. Massé and Hautefeuille seem to adopt the opinion that the affirming gun (*coup de semonce*) should be fired only under national colors. But as such gun is in no respect an act of hostility, we can perceive no good reason why it may not be fired under false colors. (International Law, Baker's ed., p. 570.)

Testa gives the Portuguese point of view as follows:

Dans la guerre maritime, le stratagème de hisser un pavillon étranger pour tromper l'ennemi supérieur en forces et éviter

ainsi le combat, est autorisé; il est permis aussi aux navires de guerre de se dissimuler par le désordre de leur tenue et de se faire prendre ainsi pour des navires de commerce; mais engager le combat ou même affirmer par un coup de canon la nationalité du navire sous un pavillon qui ne lui appartient pas; demander un secours et simuler un danger pour attirer l'ennemi et le surprendre ensuite, sont des actes réprouvés par tous. Ce ne sont plus là des strategèmes de guerre; c'est la trahison et l'offense aux lois dictées par l'honneur et la morale universelle, et en certains cas même, aux lois qui règlent le respect pour la neutralité." (Droit public international maritime, p. 144.)

Risley says there is some difference of opinion in regard to the raising of the true flag before firing the affirming gun.

One more lawful stratagem should perhaps be mentioned, and that is the sailing of a ship under false colors. A ship of war may approach an enemy under false colors, but must hoist her own colors before she fires. On getting within range she usually fires an "affirming" gun, or a *coup de semonce*, across the other ship's bows, warning her to heave to. This is merely a preliminary to search, or, if the other vessel shows fight, to hostilities, and therefore some authorities maintain that the true colors need not be hoisted until after the affirming gun has been fired. The general opinion is that she must hoist her national colors before she fires at all. (Law of War, p. 121.)

Hall states his idea of the use of false colors as follows:

A curious arbitrary rule affects one class of stratagems by forbidding certain permitted means of deception from the moment at which they cease to deceive. It is perfectly legitimate to use the distinctive emblems of an enemy in order to escape from him or to draw his forces into action; but it is held that soldiers clothed in the uniforms of their enemy must put on a conspicuous mark by which they can be recognized before attacking, and that a vessel using the enemy's flag must hoist its own flag before firing with shot or shell. The rule, disobedience to which is considered to entail grave dishonor, has been based on the statement that "in actual battle, enemies are bound to combat loyally and are not free to insure victory by putting on a mask of friendship." In war upon land victory might be so insured, and the rule is consequently sensible; but at sea—and the prohibition is spoken of generally with reference to maritime war—the mask of friendship no longer misleads when once fighting begins, and it is not easy to see why it is more disloyal to wear a disguise when it is obviously useless, than when it serves its purpose. (International Law, 5th ed., p. 538.)

Maine says:

It must, however, be observed that no deceit is allowable where an express or implied engagement exists that the truth should be acted or spoken. To violate such an engagement is perfidy, and contrary alike to the customs of war and the dictates of honor. For example, it is a gross breach of faith and an outrage against the customs of war to hoist a hospital flag on buildings not appropriated to the wounded, or to use a place protected by a hospital flag for any other purpose than a hospital. (International Law, p. 149.)

Risley says:

A fraudulent use of signals of distress as a means of approach is not legitimate sailing under false colors, but an act of treachery. (Law of War, p. 121.)

It is difficult to understand upon what ground the flying of false colors can be justified when used solely for the purpose of getting within range of an opponent when it is forbidden to fire under false colors the shot which is thus made effective. Some statements are to the effect that no acts of hostility may be committed under a false flag. A recent decision of the Japanese court seems to hold properly that hostilities are not merely those acts involved in physical contact of the belligerent forces, but that hostilities date from the time when one force sets out with the intention of engaging the other—i. e., when the Japanese fleet sailed from Sasebo, and not at the time when it attacked the Russians at Port Arthur.

Questions also arise as to the use of false colors when passing a fortification, landing troops, laying mines, or in actions not involving the firing of a gun.

Some authorities maintain that such acts are as directly hostile as the firing of a gun and should not be masked under false colors, on the ground that perfidy in war is forbidden.

The right to fly the national flag being one most carefully guarded, and the flag being ordinarily held as the emblem most entitled to respect, third powers are now beginning to ask by what right a belligerent flies a flag to which it has no right.

False colors during an insurrection.—The propriety of the use of the United States flag by a regular war vessel

of the established Government of Venezuela during the period of insurrection was under consideration in 1902.

The case is summarized in the letter of Mr. Bowen to Mr. Hay:

No. 127.] LEGATION OF THE UNITED STATES,
Caracas, September 24, 1902.

SIR: I have the honor to inform you that on the 22d instant, at 7 p. m., I called on the minister for foreign affairs and told him that I had just received the confirmation of a rumor I had heard several days before, to the effect that the Venezuelan war ship *Restaurador* had steamed up the Orinoco and entered the port of Ciudad Bolivar flying the American flag at her foremast, it having been placed there with the object of deceiving the revolutionists and of approaching Ciudad Bolivar so closely as to permit her to bombard the town effectively.

I then said to him:

"Your captain dishonored the American flag; he should be ordered to raise it and salute it, and your Government should apologize."

He answered that he had heard nothing about the incident, and that he desired to have several days so as to investigate it. I replied:

"The facts that I have presented to you are indisputable, and I can give you only twenty hours, for I feel that at the end of that time I must cable the facts to my Government."

He thereupon agreed to act within the time specified. Before I left him I told him that the captain of the *Restaurador* had called the day before on Captain Diehl, the commander of the U. S. S. *Marietta*, stating that he had displayed it simply as he would have a flag of truce, and that he hauled it down before beginning the bombardment. I characterized the captain's explanation as neither credible nor satisfactory, and the minister's silence proved that he believed I meant what I said.

The following morning the first secretary of state called on me at 11 o'clock, and, after stating that his chief was ill in bed, informed me that he had been sent by his Government to express its regret that the American flag had been used improperly by the *Restaurador*, and that orders would be sent to her captain that afternoon to raise it and salute it with 21 guns. He then spoke of the earnest desire entertained by his Government to maintain friendly relations with the United States, and to remain on the best of terms with this legation. I assured him that the sentiments he had expressed are reciprocated most warmly by both the United States Government and by this legation, and I sent by him my best wishes to the minister for foreign affairs for his speedy recovery.

After he had gone I sent word to Captain Diehl, through Mr. Goldschmidt, our consul at La Guaira, that the *Restaurador* would salute our flag before sunset. Shortly after 5 o'clock Mr. Goldschmidt telephoned me that the full salute of 21 guns had just been fired by the *Restaurador*, and that our flag meanwhile had been displayed at her foremast.

My reason for not cabling to you for instructions, and for not entering into a written discussion with the Venezuelan Government, was because I feared if there was any delay the *Restaurador* might leave the port of La Guaira, and thus avoid doing honor to the flag she had insulted.

During my conversation with the Venezuelan authorities I took the precaution to have Mr. Russell, the secretary of this legation, present, and I am indebted to him for several remarks he made that helped to render the settlement of the matter satisfactory.

I am, etc.,

HERBERT W. BOWEN.

(U. S. Foreign Relations, 1902, p. 1073.)

Pillet's zone of control.—Pillet proposed a plan for a circle of jurisdiction about a war vessel, entering which any war vessel which had not been recognized would be treated as an enemy. Pillet maintains that this would work to the advantage of both belligerent and neutral.

Il faudrait reconnaître au navire de guerre belligérant une zone de mer adjacente suffisant à sauvegarde et dans laquelle aucun autre navire de guerre non reconnu ne pourrait entrer sans être considéré et traité comme ennemi. Le belligérant échapperait alors à la dure alternative de couler un neutre innocent de toute intention hostile, ou de voir un adversaire masqué s'approcher à une distance telle qu'au moment où il révèlerait sa véritable qualité il serait impossible d'échapper à ses coups. La situation serait ainsi nettement déterminée et tout navire armé pénétrant, sans avoir justifié de sa nationalité neutre, dans cette zone de protection et de sécurité assumerait par là même les droits et les risques attachés à la qualité de belligérant. Les combattants y gagneraient de se combattre à visage découvert, les neutres vigilants y gagneraient aussi de ne plus être exposée à être pris par erreur pour des ennemis. (5 Revue générale de Droit international public, p. 448–449.)

Regulations as to false colors.—The British Manual of Naval Prize Law (1888) provides that—

The commander may chase, but under no circumstances may fire, under false colors. (No. 197.)

The Manual also provides that for bringing a vessel to, the commander—

should give warning by firing successively two blank guns, and then, if necessary, a shot across her bows; but before firing, the commander, if he has chased under false colors or without showing his colors, should be careful to hoist the British flag and pendant. (No. 200, p. 62.)

The Regulations of the Navy of the United States, 1905, provide that—

Under no circumstances shall he (the commander) commence an action or fight a battle without the display of the national ensign. (No. 293.)

The Japanese Regulations Governing Captures at Sea of 1904–5 provide that—

The captain of an imperial man-of-war may chase a vessel without hoisting the ensign of the imperial navy or under false colors. But before giving the vessel the order to stop he must display the ensign of the imperial navy. (Article LII.)

Summary.—The failure to display colors before firing a gun is in no sense an act of perfidy. There is in this no claim to identity or national character. It is for the enemy to find out of what nationality the approaching vessel may be. Until this is established the enemy must guard against surprise.

It is evident that there is a considerable diversity of opinion and regulation in regard to the use of false colors. It is evident that some clearer definition of the use of the flag should be made. It is questionable whether the present regulation secures the results which upon its face it purports to secure, i. e., denies the propriety of combat under a false flag, because the most essential part of a modern action may not be the firing of a gun, but in case of a vessel of inferior speed approaching one superior in speed, the important consideration for the inferior vessel is to come within a range from which it may be able to bring an effective shot to bear upon the superior vessel.

If the use of false colors be merely for the purpose of bringing a merchant vessel within the range of possible capture, then under present conditions it hardly seems a

practice of greatest importance, as the capture of merchant vessels is only a means to an end and not the prime object of modern warfare.

It is now generally considered that a neutral has an exclusive right to the use of his own flag and the right to prescribe under what conditions it may be used. Of course this right to the exclusive use of his own flag may place upon the neutral certain obligations to guard against its misuse.

A neutral would seem to be acting reasonably in demanding that his national emblem shall not be used by a belligerent to cover any act which may work injury to the other belligerent, which, as regards the neutral, is a friendly state. While the practice has hitherto been tolerated it seems to be an infringement of the natural rights of the neutral state. It may also work hardship for a neutral vessel, for when the use of its colors is permitted to either belligerent it can not surely establish its identity by raising its national flag. Such standards of action have long been eliminated from land warfare and its continuance on the sea is hardly in accord with the standard of fair dealing which generally obtains in naval warfare.

The prohibition of the use of false colors by international agreement would give to neutral war vessels much greater security in their ordinary and proper movements, i. e., in case war should break out between States A and B and a war vessel of neutral C, not knowing that war existed, should for any reason approach a harbor of B flying its true colors, it would be free from the risk it would otherwise incur.

The use of the form of stratagem involved in flying false colors does not seem to bring any advantage commensurate with the disadvantages.

It is admitted that where a vessel summons another to lie to the summoning vessel should make known its identity by displaying its proper flag, the same is true regarding a vessel before firing a gun in action. It is claimed by many, not without reason, that the rule should be extended to cover all classes of hostile action. To prohibit

altogether the use of false colors would be little, if any, in advance of this proposition, and would remove from consideration all question as to what constitutes hostile action.

On the whole, therefore, it would seem advisable to prohibit the use of false colors, but at the same time the prohibition should not deprive a belligerent of any proper means of attack or defense.

Pillet's proposed zone (p. 16) within which no other man-of-war, not recognized, can enter without being considered and treated as an enemy is open to objections. The limits of such an arbitrary zone are very difficult to determine. Its establishment would in some degree restrict the right of neutrals in the navigation of the high seas. A belligerent vessel should have the right to guard against attack from points outside any zone that might reasonably be established.

The existing practice that any vessel not showing her colors in response to a summons is liable to treatment as an enemy should be embodied in any new regulations which may be adopted. Such a regulation coupled with the prohibition of the use of false colors would enable a belligerent to assure himself of the nationality of an approaching vessel, or failing that, to take immediate action. It would relieve the belligerent of the risk of serious mistake which prevails when false colors are tolerated; for certainly it would be a grave misfortune to fire upon an innocent passing vessel on the sea on suspicion that she might be a belligerent under false colors.

It is held by some that the prohibition of the use of false colors should be limited to their use by the public vessels of the belligerents. It is argued, with much force, that the use of false colors by a neutral vessel would be in itself such strong evidence that the vessel was carrying contraband or engaged in unneutral service that the practice would be rare; and further, to prohibit a private or merchant vessel of a belligerent from using her enemy's or a neutral flag, as a possible means of diverting her enemy's attention and thus escaping capture, is to deprive her of a legitimate stratagem, which involves only per-

missible deceit, not the slightest degree of perfidy, and no injury to the neutral in case a neutral flag were used.

Conclusion.—To bring about results in accord with modern ideas, without undue restriction of belligerent action, regulations like the following are proposed:

1. The use of false colors by public vessels in war is prohibited.

2. When a public belligerent vessel summons a vessel to lie to, or before firing a gun and during action, the national colors shall be displayed.

3. Any vessel not showing her colors in response to a summoning gun may be considered and treated as an enemy.

Topic II.

What restrictions should be placed upon the transfer of flags of merchant vessels during or in anticipation of war?

CONCLUSION.

(*a*) The transfer of vessels, when completed before the outbreak of war, even though in anticipation of war, is valid if in conformity to the laws of the state of the vendor and of the vendee.

(*b*) The transfer of a private vessel from a belligerent's flag during war is recognized by the enemy as valid only when bona fide and when the title has fully passed from the owner and the actual delivery of the vessel to the purchaser has been completed in a port outside the jurisdiction of the belligerent states in conformity to the laws of the state of the vendor and of the vendee.

DISCUSSION AND NOTES.

General practice as regards commerce.—Any restriction on the sale of vessels in the time of war would be a restriction on commerce. As a general rule a citizen of a neutral state may carry on commerce in the time of war as in the time of peace. It is generally admitted also that a belligerent has a right to take reasonable measures to bring his opponent to terms. It has been held that a neutral may be under obligation to use "due diligence" in order that acts hostile to either belligerent may not be undertaken within its jurisdiction. The arbitrators in case of the *Alabama* declared that "due diligence" should be "in exact proportion to the risks to which either of the belligerents may be exposed from a failure to fulfill the obligations of neutrality on their part." Citizens of neutral states can not perform certain services for a belligerent without rendering themselves or their property liable to treatment as hostile. How far the neutral state is bound to interfere in order to prevent its citizens from engaging in certain transactions is not fully determined.

Ordinary commercial transactions which can not affect the issue of the war are permitted.

In certain respects the purchase of goods belonging to a belligerent by a neutral may be a most effective method of freeing them from liability to capture. In the case of vessels sold by a subject of one state to a subject of another state, the transfer to the flag of the nation of the new owner ordinarily follows.

A vessel purchased from a subject of a belligerent by a subject of a neutral state would then pass under the protection of the neutral state and be exempt from capture. There is a great probability, therefore, that transfers will be made solely for the purpose of obtaining the protection of a neutral flag. Such transfers might not be of the nature of a valid sale. The opposing belligerent has therefore exercised the right of testing the validity of the transfer before the prize court. The Continental practice has been more in the direction of regarding all sales made with a knowledge of the existence of war as invalid. There have been many cases before the American and British courts. In these courts the neutral purchaser is generally under obligation to establish the validity of his claim to the ownership by abundant proof. The attitude of the courts under various circumstances may be seen in the following opinions:

Opinions of courts on transfers.—In the case of *The Jemmy* in 1801, Lord Stowell maintained that—

> When an enemy ship has been transferred to a neutral owner, but is left under the same management and in the same trade as before the transfer, the conclusive presumption is raised that the transfer is not genuine. (4 C. Robinson's Report, 31.)

In the case of the *Sechs Geschwistern* Lord Stowell supports the position that a transfer is void if the enemy still retains any interest in the transferred property. He says:

> This is the case of a ship asserted to have been purchased of the enemy, a liberty which this country has not denied to neutral merchants, though by the regulation of France it is entirely forbidden. The rule which this country has been content to apply is that property so transferred must be bona fide and absolutely

transferred; that there must be a sale divesting the enemy of all further interest in it; and that anything tending to continue his interest vitiates a contract of this description altogether. This is the rule which this country has always considered itself justified in enforcing; not forbidding the transfer as illegal, but prescribing such rules as reason and common sense suggest to guard against collusion and cover, and to enable it to ascertain, as much as possible, that the enemy's title is absolutely and completely divested. (4 C. Robinson's Admiralty Reports, 100.)

In 1805 Lord Stowell said:

The court has often had occasion to observe that where a ship, asserted to have been transferred, is continued under the former agency and in the former habits of trade not all the swearing in the world will convince it that it is a genuine transaction. (The *Omnibus*, 6 C. Robinson's Admiralty Reports, 71.)

In the case of the *Ernst Merck* in 1854, Doctor Lushington says:

This being a sale by a merchant, now become an enemy, very shortly before the war, is a transaction requiring to be very narrowly investigated, and respecting which the court must exercise great vigilance lest the property of the enemy should be sheltered under a fictitious sale. A real bona fide sale is, no doubt, within the bounds of lawful commerce—of commerce lawful to the neutral; but if a neutral merchant chooses to engage for the purpose of extraordinary profit in dangerous speculations of this kind, he must be bound to satisfy the court of the fairness of the transaction by the clearest evidence, complete in all legal form, and not only in legal form, but in truth and reality. If he does not produce such proof, or produces it in part only, when the *res gestæ* show that better proof might have been adduced, he must not expect restitution upon such incomplete evidence. (Spinks' English Prize Cases, 98.)

The law requires, where a vessel has been purchased shortly before the commencement of the war or during the war, clear and satisfactory proof of the right and title of the neutral claimant, and of the entire divestment of all right and interest in the enemy vendor. The onus is put upon the claimant to produce this proof; if he does not do so the court can not restore. The court is not called upon to say that the transaction is proved to be fraudulent; it is not required that the court should declare affirmatively that the enemy's interest remains; it is sufficient to bar restitution if the neutral claim is not unequivocally sustained by the evidence. (*Ibid.*)

In the case of the *Sally Magee*, the decision of the district court was affirmed by the Supreme Court of the United States. It was maintained that—

> The capture clothes the captors with all the rights of the owner which subsisted at the commencement of the voyage, and anything done thereafter, designed to incumber the property or change its ownership, is a nullity. No lien created at any time by the secret convention of the parties is recognized. Sound public policy and the right administration of justice forbid it. This rule is rigidly enforced by all prize tribunals. The property was shipped to the enemy. It was diverted from its course by the capture. The allegation of a lien wears the appearance of an afterthought. It strikes us as a scheme devised under pressure to save, if possible, something from the vortex which it was foreseen inevitably awaited the vessel and cargo. (3 Wallace, Supreme Court Reports, 451.)

The case of the *Benito Estenger*, which was captured during the war with Spain by a United States war vessel, was appealed to the Supreme Court.

Mr. Chief Justice Fuller stated that—

> The vessel prior to June 9, 1898, was the property of Enrique de Messa, of the firm of Gallego, de Messa & Co., subjects of Spain and residents of Cuba. On that day a bill of sale was made by de Messa to the claimant, Beattie, a British subject, and on compliance with the requirements of the British law governing registration, was registered as a British vessel in the port of Kingston, Jamaica. The vessel had been engaged in trading with the island of Cuba, and more particularly between Kingston and Montego, Jamaica, and Manzanillo, Cuba. She left Kingston on the 23d of June, and proceeded with a cargo of flour, rice, corn meal, and coffee to Manzanillo, where the cargo was discharged. She cleared from Manzanillo at 2 o'clock a. m., June 27, for Montego, and then for Kingston, and was captured at half-past five of that day off Cape Cruz. The principal question was as to the ownership of the vessel and the legality of the alleged transfer, but other collateral questions were raised in respect to the alleged Cuban sympathies of de Messa; service on behalf of the Cuban insurgents in the United States; and the relation of the United States consul to the transactions which preceded the seizure. It was argued that the vessels of Cuban insurgents and other adherents could not be deemed property of the enemies of the United States; that this capture could not be sustained on the ground that the vessel was such property; that the conduct of de Messa in his sale to Beattie was lawful, justifiable, and the only means of protecting the vessel as neutral property

from Spanish seizure; and finally, that this court could and should do justice by ordering restitution, under all the circumstances of the case. (176 U. S. Supreme Court Reports, 568.)

The Supreme Court, however, affirmed the decree of the district court condemning the vessel as prize, maintaining—

1. The trading to a stronghold of the enemy, of an enemy vessel carrying provisions, constitutes, under the laws of war, illicit intercourse with the enemy, subjecting the property to capture as a prize.

2. The individual acts of friendship of a subject of one nation at war, toward the other nation, will not affect his status as an enemy.

3. A United States consul has no authority by virtue of his official station to grant any license or permit to exempt a vessel of the enemy from capture and confiscation.

4. A colorable transfer of a ship from a belligerent to a neutral is in itself ground for condemnation as prize.

5. The burden of proving neutral ownership of a vessel in a prize case is on the claimants. (Ibid.)

Transfer of vessels adapted for war use.—The sale of a vessel of war or of a vessel so constructed as to be easily adapted for war uses would be open to greater objections than the sale of an ordinary vessel primarily suited for commercial use only. At the present time many vessels are constructed under government subsidy or with some agreement by which they pass to government use at the outbreak of war. The sale by a belligerent to a neutral of a vessel of a character to be especially serviceable in war would only in rare cases be regarded as valid.

Lord Stowell held in 1807 in the case of the *Minerva*, that—

The sale of an enemy ship of war lying in a neutral port to a neutral is invalid, and if such vessel after such sale be captured, she will be condemned. (6 C. Robinson's Reports, 396.)

During the civil war in America the *Georgia*, a vessel which had been used as a war vessel by the Confederate States, was taken into Liverpool, the armament was removed, and the vessel sold to a neutral at public sale. Mr. Adams maintained that—

The *Georgia* might be made lawful prize whenever and under whatever colors she should be found sailing on the high seas,

and instructed the United States cruisers accordingly. It was stated that the purchase by neutrals of ships of war belonging to enemies would be invalid if made during hostilities. The Supreme Court of the United States said:

It has been suggested that, admitting the rule of law as above stated, the purchase should still be upheld, as the *Georgia*, in her then condition, was not a vessel of war, but had been dismantled, and all guns and munitions of war removed; that she was purchased as a merchant vessel, and fitted up bona fide for the merchant service. But the answer to the suggestion is, that if this change in the equipment in the neutral port, and in the contemplated employment in future of the vessel, could have the effect to take her out of the rule, and justify the purchase, it would always be in the power of the belligerent to evade it, and render futile the reasons on which it is founded. The rule is founded on the propriety and justice of taking away from the belligerent, not only the power of rescuing his vessel from pressure and impending peril of capture, by escaping into a neutral port, but also to take away the facility which would otherwise exist, by a collusive or even actual sale, of again rejoining the naval force of the enemy. The removed armament of a vessel, built for war, can be readily replaced, and so can every other change be made, or equipment furnished for effective and immediate service. The *Georgia* may be instanced in part illustration of this proof. Her deck remained the same, from which the pivot guns and others had been taken; it had been built originally strong, in order to sustain the war armament, and further strengthened by uprights and stanchions beneath. The claimant states that the alterations, repairs, and outfit of the vessel for the merchant service cost some £3,000. Probably an equal sum would have again fitted her for the replacement of her original armament as a man-of-war.

The distinction between the purchase of vessels of war from the belligerent, in time of war, by neutrals in a neutral port, is founded on reason and justice. It prevents the abuse of the neutral by partiality toward either belligerent, when the vessels of the one are under pressure from the vessels of the others, and removes the temptation to collusive or even actual sales, under the cover of which they may find their way back again into the service of the enemy. (The *Georgia*, 7 Wallace, 32.)

Transfers in transitu.—At times belligerents have endeavored to free their ships from danger of capture by transferring them to a neutral while *in transitu*. The courts of all states seem to be uniformly opposed to the toleration of such a practice.

The case of the *Vrow Margaretha* was an early case involving transfer, *in transitu*. Admitting that such transfers may be legitimate in time of peace, Lord Stowell says:

When war intervenes, another rule is set up by courts of admiralty, which interferes with the ordinary practice. In a state of war, existing or imminent, it is held that the property shall be deemed to continue as it was at the time of shipment till the actual delivery; this arises out of the state of war, which gives a belligerent a right to stop the goods of his enemy. If such a rule did not exist all goods shipped in the enemy's country would be protected by transfers which it would be impossible to detect. It is on that principle held, I believe, as a general rule, that property can not be converted *in transitu*, and in that sense I recognize it as the rule of this court. But this arises, as I have said, out of a state of war, which creates new rights in other parties, and can not be applied to transactions originating, like this, in a time of peace. The transfer, therefore, must be considered as not invalid in point of law, at the time of the contract; and being made before the war it must be judged according to the ordinary rules of commerce. (1 C. Robinson, Admiralty Reports, 336.)

Further, in the case of the *Jan Frederick*, Lord Stowell says:

That a transfer may take place *in transitu*, has, I have already observed, been decided in two or three cases, where there had been no actual war, nor any prospect of war, mixing itself with the transaction of the parties. But in time of war this is prohibited as a vicious contract, being a fraud on belligerent rights, not only in the particular transaction, but in the great facility which it would necessarily introduce, of evading those rights beyond the possibility of detection. It is a road that, in time of war, must be shut up; for although honest men might be induced to travel it with very innocent intentions, the far greater proportion of those who passed would use it only for sinister purposes, and with views of fraud on the rights of the belligerent. (5 C. Robinson, Admiralty Reports, 128.)

When an absolute transfer of title to a vessel is made while the vessel is *in transitu* there is no means of delivery of the vessel to the purchaser until it comes into the hands of the purchaser. In the case of the *Baltica* in 1857 the question was raised as to the duration of *transitus*.

The court held that—

In order to determine the question, it is necessary to consider upon what principle the rule rests, and why it is that a sale

which would be perfectly good if made while the property was in a neutral port, or while it was in an enemy's port, is ineffectual if made while the ship is on her voyage from one port to the other. There seem to be but two possible grounds of distinction. The one is, that while the ship is on the seas, the title of the vendee can not be completed by actual delivery of the vessel or goods; the other is, that the ship and goods having incurred the risk of capture by putting to sea, shall not be permitted to defeat the inchoate right of capture by the belligerent powers, until the voyage is at an end.

The former, however, appears to be the true ground on which the rule rests. Such transactions during war, or in contemplation of war, are so likely to be merely colourable, to be set up for the purpose of misleading, or defrauding captors, the difficulty of detecting such frauds, if mere paper transfers are held sufficient, is so great, that the courts have laid down as a general rule, that such transfers, without actual delivery, shall be insufficient; that in order to defeat the captors, the possession, as well as the property, must be changed before the seizure. It is true that, in one sense, the ship and goods may be said to be *in transitu* till they have reached their original port of destination; but their Lordships have found no case where the transfer was held to be inoperative after the actual delivery of the property to the owner. That the *transitus* ceases when the property has come into the actual possession of the transferee is a doctrine perfectly consistent with the decisions in the *Danckebaar Africaan*, and in the *Negotie en Zeevaart*, on the authority of which the former case was decided * * *

In the case of the *Vrow Margaretha*, it is distinctly stated by Lord Stowell that the *transitus* ceases by the actual delivery of the property. After stating that, by the usage of merchants, a transfer of property *in transitu* may be made by the execution of proper documents, he proceeds: "When war intervenes, another rule is set up by courts of admiralty, which interferes with the ordinary practice. In a state of war, existing or imminent, it is held that the property shall be deemed to continue as it was at the time of shipment till the actual delivery; this arises out of the state of war, which gives a belligerent a right to stop the goods of his enemy." He then assigns the reason for the rule, namely, that if it were otherwise, "all goods shipped in an enemy's country would be protected by transfers which it would be impossible to detect," and adds: "It is on that principle held, I believe, as a general rule, that property can not be converted *in transitu*, and in that sense I recognize it as the rule of this court." (11 Moore, Privy Council, 141.)

Methods of establishing nationality.—Although certain principles seem to have been generally accepted by the

courts, yet there are still many possibilities of complications because of lack of uniformity in regard to the method of establishing the nationality of a vessel.

The method by which the nationality of a vessel is determined is now often provided by treaty. The provisions between various states and the United States are not uniform.

Argentine Republic, 1853—

ART. VII. The contracting parties agree to consider and treat as vessels of the United States and of the Argentine Confederation, all those which, being furnished by the competent authority with a regular passport or sea letter, shall, under the then existing laws and regulations of either of the two Governments, be recognized fully and bona fide as national vessels by that country to which they respectively belong.

Belgium, 1875—

ART. IX. The high contracting parties agree to consider and to treat as Belgian vessels, and as vessels of the United States, all those which being provided by the competent authority with a passport, sea letter, or any other sufficient document, shall be recognized, conformably with existing laws, as national vessels in the country to which they respectively belong.

Bolivia, 1858—

ART. XXII. To avoid all kind of vexation and abuse in the examination of the papers relating to the ownership of the vessels belonging to the citizens of the two contracting parties, they agree, that, in case one of them should be engaged in war, the ships and vessels belonging to the citizens of the other must be furnished with sea letters, or passports, expressing the name, property, and bulk of the ships, as also the name and place of habitation of the master and commander of said vessel, in order that it may hereby appear that said ship truly belongs to the citizens of one of the parties; they likewise agree, that such ships being laden, besides the said sea letters or passports, shall also be provided with certificates, containing the several particulars of the cargo, and the place whence the ship sailed, so that it may be known whether any forbidden or contraband goods be on board the same; which certificates shall be made out by the officers of the place whence the ship sailed, in the accustomed form; without such requisites, said vessels may be detained, to be adjudged by the competent tribunal, and may be declared a legal prize, unless the said defect shall prove to be owing to accident, and supplied by testimony entirely equivalent.

Brazil, 1828, article 21, similar to Bolivia.
Columbia, 1846, article 22, similar to Bolivia.
Italy, 1871—

ART. XVII. All vessels sailing under the flag of the United States, and furnished with such papers as their laws require, shall be regarded in Italy as vessels of the United States, and reciprocally, all vessels sailing under the flag of Italy and furnished with the papers which the laws of Italy require, shall be regarded in the United States as Italian vessels.

The late treaty with Japan in 1894 provides:

ART. XII. All vessels which, according to the United States law, are to be deemed vessels of the United States, and all vessels which, according to Japanese law, are to be deemed Japanese vessels, shall, for the purposes of this treaty, be deemed vessels of the United States and Japanese vessels, respectively.

The latest treaty with Spain in 1902 contains the following article:

ART. XI. All vessels sailing under the flag of the United States, and furnished with such papers as their laws require, shall be regarded in Spain as United States vessels, and reciprocally, all vessels sailing under the flag of Spain and furnished with the papers which the laws of Spain require, shall be regarded in the United States as Spanish vessels.

French regulations.—The provision of the early law of France in regard to transfer still holds good for that country. Article 7 of the Regulations of July 26, 1778, provides:

Les bâtiments de fabrique ennemie, ou qui auront eu un propriétaire ennemi, ne pourront être réputés neutres ou alliés s'il est trouvé à bord quelques pièces authentiques, passés devant des officiers publics, qui puissent en assurer la date, et qui justifient que la vente ou cession en a été faite à quelqu'un des puissances alliés ou neutres avant le commencement des hostilités, et si ledit acte translatif de propriété de l'ennemi au sujet neutre ou allié n'a été dûment enregistré par-devant le principal officier de départ, et signé du propriétaire ou du porteur de ses pouvoirs.

The French "Instructions Complémentaires" of July 25, 1870, regard particularly the transfer of vessels to a neutral flag. Article 7 provides:

Lorsqu'il résulte de l'examen des pièces de bord que, depuis la déclaration de guerre, la nationalité du navire antérieurement ennemi a été changée par une vente faite à des neutres; que

celle des propriétaires a été modifiée par naturalisation ou que l'équipage d'un bâtiment neutre comprend une proportion notable de sujets ennemis, il y a lieu de procéder avec la plus grande attention et de s'assurer que toutes ces opérations ont été exécutés de bonne foi et non dans le seul but de dissimuler une propriété réellement ennemie.

United States regulations.—A citizen of the United States may purchase and employ abroad a foreign ship and may fly the flag of the United States "as an indication of ownership and for due protection of his property." Such a vessel while entitled to the protection of the United States as the property of a citizen is not entitled to be registered in the United States.

Section 4132 of the Revised Statutes describes vessels which may be registered in the United States:

Vessels built within the United States, and belonging wholly to citizens thereof, and vessels which may be captured in war by citizens of the United States and lawfully condemned as prize, or which may be adjudged to be forfeited for a breach of the laws of the United States, being wholly owned by citizens, and no others, may be registered as directed in this title.

As to the right of a vessel purchased in a foreign country by a citizen of the United States to fly the United States flag, the Consular Regulations provide that—

The privilege of carrying the flag of the United States is under the regulation of Congress, and it may have been the intention of that body that it should be used only by regularly documented vessels. No such intention, however, is found in any statute. And as a citizen is not prohibited from purchasing and employing abroad a foreign ship, it is regarded as reasonable and proper that he should be permitted to fly the flag of his country as an indication of ownership and for the due protection of his property. The practice of carrying the flag by such vessels is now established. The right to do so will not be questioned, and it is probable that it would be respected by the courts. (No. 347.)

Transfers of vessels not entitled to United States registry to citizens of the United States in order to obtain the protection of the United States have been made. Sales of vessels under consular certification have been quite frequent and sometimes for the distinct purpose of avoiding

capture. Ordinarily such transfers are from a belligerent to a neutral.

In 1898, during the Spanish-American war, however, certain vessels owned by the Spanish Compañia Maritima, a corporation under Spanish laws, but largely foreign owned, had a large number of steamers under the Spanish flag engaged in inter-island trade. It was known that the natives would no longer respect this flag. The officer exercising the functions of United States consul at Manila certified a bill of sale of these vessels to an American citizen long resident in Manila and the Captain of the Port issued a "provisional register" giving the vessels a right to carry the American flag and to receive protection as American *property*. This did not entitle such vessels to American registry, but did afford them the protection of the flag. This case of transfer of vessels from the flag of one belligerent to the flag of the other seems to be without precedent.

Transfers *en bloc* of large numbers of vessels from a belligerent to a neutral flag have also been made. Such transfers were made during the Chile-Peruvian war in 1879, in Franco-Chinese troubles in 1885, and at other times. Such transfers have come to be considered of much importance in determining the result of the war.

Recent English discussions.—In the Report of the Royal Commission on Supply of Food and Raw Material in Time of War, presented to the British Parliament in 1905, there were various references in the "Minutes of Evidence" (Vol. II) to the transfer in time of war of the flag of merchant vessels of a belligerent to a neutral.

Among these questions are the following:

> In the examination of Sir A. L. JONES, of Messrs. Elder, Dempster & Co.—
>
> 5966–5967. Q. (Professor HOLLAND.) As to a transfer to a neutral flag; do you contemplate that as a possible thing in the case of difficulty?—A. Certainly; I am quite prepared to do so tomorrow, if there was a war with America; I think that I would at once transfer my ships to some neutral flag, and I would transfer them to the flag which is most convenient.
>
> 5968. Q. Suppose war broke out suddenly; do you imagine that you would be quite able to do it?—A. I could do it in a day or two.

5969–5970. Q. On a transfer to any neutral flag, have you considered whether the enemy's cruiser would recognize that as a bona fide transfer, if it took place after the outbreak of war?—A. I think it is very likely she would; we had plenty of transfers of shipping during the American war.

5971. Q. We will not, I think, go further into it now, if you please.—A. Why do you think the neutral power would not respect it?

5972. Q. I am not here to give information, but to try to get it. You have said that a war with the United States—which Heaven forfend—might lead to the transfer of our ships to a neutral flag, partly on account of American privateers?—A. Or men-of-war; you see we have such an enormous lot of ships that it would be very easy for the Americans to catch one or two of them.

* * * * * * *

5986. Q. (Lieutenant Colonel MONTGOMERY.) At the risk of repetition, would you be good enough now to tell us what would be your first consideration with regard to this large fleet that you control in the case of a serious apprehension of war?—A. If we had war to-morrow, I should begin to inquire at once at what rate I could insure outside. I might think that the risk was too much for our concern to take it all on its own account. Many of our ships are not insured for a penny, and none of them is more than half insured. Then if I found that the risk was more than I could pay, I should advance my rates of freight to enable me to pay the risk that was demanded by the underwriters.

5987. Q. You would first look to your insurance, and then, having effected the insurance, you would look to get reimbursed by the freight you would charge; is that it?—A. Certainly.

5988. Q. Then, also, as I have gathered from the questions that have been put to you, you would take into consideration the subject of the transfer to a neutral flag?—A. I would consider any fair means by which I could make money and carry on my trade. I certainly would not care to have three or four millions sterling lying up in the docks if I could insure my ships and get a rate of freight to compensate me. If I could put my ships under a neutral flag, so that I could take the risk myself and get a higher rate of freight under the neutral flag, I would do so. It would be a question of how to make the most money.

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6040. Q. (Sir JOHN COLOMB.) I understood you to say that in the event of war you could transfer your ships in a couple of hours?—A. Did I not say a couple of days? I think you could do that.

6041. Q. A vast proportion of your ships would be at sea?—A. That would not alter it.

6042. Q. The conditions are these: The overwhelming proportion of your ships is now at sea, we have an outbreak of war,

and you say within to-day and to-morrow you could transfer these ships?—A. Yes, I think I can. You do not want to have a ship in port in order to transfer her.

6043. Q. Any of those ships within the next three days may be taken, and if one of them was taken by an enemy's cruiser, not knowing that she had been transferred, what would happen?—A. It would be bad for me. You are quite right; the enemy might come up and catch my ship before I got her into port and transferred her on the port register; but I could transfer my ship while she was at sea.

6044. Q. Putting your previous answer together with your present answer it comes to this, does it not, that the whole of your British ships at sea on the outbreak of war may be covered by this transfer, but the ships themselves would not even know it and would not have their papers?—A. There is no question about that. Until the ship comes into port we might have a little difficulty if she had been caught in the meantime. But we could transfer her.

6045. Q. (Professor HOLLAND.) Are you aware that a transfer at sea before possession is taken would be entirely invalid, and would be disregarded by a prize court afterwards, and that the ship would be condemned?—A. I think it is very likely, if the ship was seized before she got a legitimate transfer in port. Of course the man at sea would not know that she was transferred, and the man who catches him would say, "Here is a British ship," and off she goes.

6046. Q. Are you aware that after she got into port subsequent to capture, and if the purchaser was ready to take possession, and so forth, the whole thing would be invalid, the transfer would be thrown aside, and the ship would be condemned?—A. I am not aware of that. If I got my ship, for instance, into Antwerp, and I had a regular transfer to another company, and the steamship company received consideration in some way, then, if that ship went to sea, I should consider that she was properly a Belgian ship.

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6150. Q. (The DUKE OF SUTHERLAND.) Supposing no arrangement has been made beforehand, what would be the actual process of transfer to a neutral flag; how long would it take?—A. I say we would do it in a couple of days. We have done it before in a couple of days.

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6156. Q. (Mr. ROBERTSON.) I gather that you are familiar with the laws of certain foreign countries, at all events as to shipowning?—A. A little.

6157. Q. The Company Law more particularly?—A. A little.

6158. Q. I suppose it is the same in various foreign countries as here that the owner of a share in a shipowning company may be a foreigner, the ship itself bearing the flag of the nation to which

the company belongs—I do not know whether you follow me?—A. I quite understand; you are putting to me whether we might have as a shareholder what would be called a foreigner in Belgium—that is, an Englishman.

6159. Q. A foreign shareholder in Belgium, or Spain, or France?—A. I am not quite sure that you can have a foreign shareholder there.

6160. Q. But you can have a foreign shareholder in this country?—A. Yes; I think you can not have an Englishman as a shareholder in a Belgian shipping company, but I am not sure about that.

6161. Q. Can not a foreigner hold a share in a company registered in Belgium owning a ship, which ship is bearing the Belgian flag?—A. I do not know whether you can do that in Belgium, but you can do that in Germany. For instance, you can buy a share in the North German Lloyd here.

6162. Q. I understood you to say that it was the case in Belgium also, but at any rate it is the case in this country?—A. Yes.

6163. Q. I want to know whether your experience enables you to say how far that is a general feature of foreign company laws relating to the owning of ships?—A. I think that a foreigner can hold shares in companies.

6164. Q. In this country?—A. Yes; you can, of course; there are lots of foreign shareholders.

6165. Q. And such a ship would fly the British flag?—A. Certainly.

6166. Q. Therefore the British flag is a mere phrase so far as the beneficial ownership of the property in the ship is concerned?—A. Yes; but by taking the foreigner's money we get the use of it.

6167. Q. Still the flag of any nation like ours offers no guarantee as to the nationality of the ownership of the shares of the ships?—A. None whatever.

6168. Q. So that "a British ship" is a mere phrase?—A. Yes, of course.

In the examination of Mr. DOUGLAS OWEN—

6516. Q. (Lord BALFOUR, chairman.) You see some special danger to our shipping industry in the present state of international laws, as I understand it?—A. Yes; I see very great dangers to our shipping from that. I may summarize my reply to that question thus: The danger to our shipping industry is undoubtedly great, for the reason that "neutrals" will naturally avoid shipping by British vessels, liable to capture, so long as neutral vessels are available not liable to capture. This is inevitable so long as private property—shipping—at sea remains liable to capture. But the declaration of Paris has introduced a new danger to our shipping, inasmuch as it makes neutral shipping a sanctuary for

the owner in such a case for the purposes of prize law is the registered owner; and he could not go behind that and inquire what shareholders constitute the corporate registered owner.

6755. Q. Is not that in one aspect rather a serious state of matters for us?—A. I think it is.

6756. Q. In this way, to put it a little more plainly, one of the checks upon a real bona fide sale would be the want of neutral capital to purchase our great shipping?—A. Yes.

6757. Q. If they were registered abroad that would be a transfer which, as you say, the captor could not go behind; but might not that transfer mean a very large and serious loss of our shipping after the war was over; or do you think the ships would be retransferred to ourselves?—A. I had not come to that question; I had not considered that probability of retransfer; I think that is rather for shipping authorities to say. I was merely dealing with this question of the company which might really be a sort of cloak for a number of enemy shareholders, and yet might protect the ships from being captured.

6758. Q. Should not the shareholders' list be looked into and brought into the prize court?—A. That might not be possible.

6759. Q. What is the security that some isolated prize court might not give a decision suitable to itself under existing circumstances, just as you told us a moment ago that the Americans had done in one case of theirs about private property?—A. It is quite possible, but I think there might be practicable difficuties in the way. I do not see how a visiting cruiser could look into the list of the shareholders of the company owning the ship, which probably would not be there—it certainly would not be there.

6760. Q. Would not they detain the whole thing until they got the shareholders' list, and would they not say "You must produce the shareholders' list before we let you go"?—A. I should not think so. They would look at the register, and if the register and the other papers were all in order they would dismiss the ship. But it is a practical difficulty which, as you say, would have to be looked into. Then as to the transfer from one flag to another. That was touched on in evidence. I was surprised to hear a witness treat it as a very light matter, that you can transfer from one flag to another in a few hours. Of course you can not if the ship is *in transitu*—till possession is delivered. There is the case in the Crimean war relating to the *Baltica*, which I mention in my memorandum, where all that is thoroughly discussed. It is very old law that as long as the *transitus* of the vessel continues you can not transfer her to a new flag unless the *transitus* is broken and the neutral purchaser takes possession.

6761. Q. You therefore brush away the suggestion that a company with two domiciles can transfer its ships while they are on voyages in all parts of the world?—A. It certainly can not.

British goods. The declaration is in effect a "declaration of transfer of belligerent commerce to neutral shipping." So far, in short, as neutral ships will be available, and neutral owners will doubtless seek to buy British shipping, our own merchants will inevitably and by force of competition be driven to seek the safety of neutral ships and to avoid the danger and expense of British ships. So that the more we rely under the treaty of Paris on neutral vessels to bring us our national supplies, the more we shall be, under the treaty of Paris, driving a "nail into the coffin of our own shipping trade." That is the dilemma, which seems to me to be unanswerable.

6517. Q. You will bear in mind, I am sure, that the reference to this Commission is as to the supplies of food and raw material in time of war; and, therefore, these issues which you are raising are, to some extent, side issues to our particular inquiry. I should be the very last person to wish to limit unduly our inquiry, and I certainly recognize as fully as anybody can, and I am sure the commission recognizes, the danger of the present state of matters in the respect that it might lead to a transference of ships in time of war from our flag to another flag. That obviously is a thing which we ought to take reasonable measures to guard against, and I think you are quite right to bring it before us, and I have no doubt we shall take notice of it. But I do not think we should go at length into great schemes for the purpose of curing that until Parliament was to decide, or the Government was to go to Parliament and say, that this is a thing that ought to be cured. Do you follow that?—A. I am quite with you, only I thought it my duty, as I was dealing generally with the question, to bring it forward. I hold very strongly the views I have expressed, but I recognize the justice of what you have said.

In the examination of Professor HOLLAND—

6753. Q. (Lord BALFOUR, chairman.) May I pass now to the questions affecting the nationality of ships?—A. Yes; as to the nationality of ships, as against the vessel visited, the flag and pass are conclusive; but a visiting cruiser may not be satisfied in every case with these *indicia*, but will go behind them and inquire into the ownership of the vessel; that is the real test.

6754. Q. Who do you mean by the "owner"—the registered owner or the real beneficiary owner?—A. The registered owner; and if there is a single registered owner who is an alien the vessel is enemy property and may be taken in. Then comes the difficulty, which was touched upon in evidence, I think, the other day, of a company being registered in a neutral country and yet being composed of enemy shareholders. That is a new question, and I do not think the visiting cruiser could go behind the registration of the ship. The captor could not look into the beneficiary ownership, because it has been decided several times that

6762. Q. And that transfer would not for a moment be looked at by any competent prize court?—A. No, certainly not. Beyond that, the prize court would scrutinize with the utmost severity the evidence of transfer, quite apart from the question of *transitus*. I refer to the Admiralty Manual upon that, which I dare say is otherwise accessible. The rules which are laid down by Lord Stowell are very minute and careful.

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6829. Q. (Sir JOHN COLOMB.)—As regards the registration of a ship as determining her nationality, do I understand your view to be that the nationality of a vessel may be determined by the country in which the ownership is registered?—A. Yes.

6830. Q. Do I understand, then, that a company running ships under the British flag, and with British subjects, if they registered those ships in a foreign country, would thereby cause all of them to be of that nationality?—A. They would have to fly the flag of the country where they were registered; they would be part of the mercantile marine of that country, and they could not fly the flag of any other country.

6831. Q. The mere fact of the ownership being registered in a foreign country would not affect the question?—A. No. If a ship belong to a company registered in a foreign country, it must fly the flag of that country, and is part of the mercantile marine of that country.

6832. Q. You, perhaps, will remember, that a case of this sort has been brought before us?—A. Yes. There is a real difficulty here, of course.

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6841. Q. I presume that as international law is really for the protection of neutrals it would be rather to the interest of the neutral under whose flag the ships would be transferred to wink at any irregularities?—A. Yes; there is no reason, I suppose, why they should be very scrupulous about it.

6842. Q. Therefore, really, it is not likely that the neutral powers would object to the transfer of ships to their flag as being irregular?—A. Not at all; it is for the belligerent to do that.

6843. Q. And the ultimate decision would depend upon whether the belligerent was the stronger; in fact, it would become a matter of force?—A. I do not admit that. It is for the belligerent prize court to decide whether it is lawful capture or not. The belligerent seizes the vessel, takes her in, and then eventually the Prize Court decides whether it is a proper capture or not.

6844. Q. Whether she was duly transferred or whether she was not?—Yes; whether it was an illusory transfer or not.

6845. Q. Speaking generally, it is not likely that the neutrals would raise the point of transfer of our ships being irregular or not?—A. No, it is no business of theirs.

6846. Q. It would rather be to their advantage?—A. Yes.

6847. Q. (Mr. EMMOTT.) You state that the presence of even one alien among the owners of a ship would disqualify her from being registered as British?—A. Yes.

6848. Q. Would that be the case in other countries, *mutatis mutandis*, of course?—A. On that I would rather refer, because I can not remember all the facts, to an article by Mr. Louis de Hart (which I think I quote in my memorandum) in the Journal of the Society of Comparative Legislation. He has an article there on the comparative law of different countries about the registration of shipping.

6849. Q. At present it is the case, is it not, that if there was a ship, one of the owners or part owners of which was an alien, she could not be registered under a foreign flag or under the British flag?—A. She could not be registered here, but a belligerent cruiser which came across her would, if one of her owners was an enemy, capture her, and the prize court would confiscate her.

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6884. Q. (Sir GERARD NOEL.) With regard to the changing of the flag, I have a little experience which I might quote. When I was on the Board of Admiralty it was part of my duty to do the transport business; on one occasion we wanted to take up a transport for some service, and there were two transports that we knew of which had been fitted for carrying horses or whatever was required; I asked about these and I found that they were sailing under the Spanish flag. I thought it was very extraordinary that two of our British ships which we had quite recently employed were sailing under the Spanish flag. They were carrying troops at the time to Cuba. This was seven or eight years ago, and before the war. I got the Admiralty to make inquiries at the board of trade as to whether we had any knowledge of these things or any means of preventing it, and I am afraid I can not tell you what the answer was; but it seemed to me that it was quite possible for an owner of a line of steamers to transfer his ships to another flag, practically without asking by your leave or with your leave?—A. It is a question for the capturing or visiting belligerent.

6885. Q. This was in peace time?—A. Yes, I know; and therefore the question which we have been discussing hardly arose. We have been discussing the question of the right of a belligerent cruiser when she visits a ship with suspicious documents on board, showing a doubtful change of nationality. I think that is a different question from the one you are considering as to the right of a Government in time of peace to prevent the transfer of its own vessels to another flag.

6886. Q. It might be the day before the war that you might have all these vessels transferred if it can be done in that easy manner. Do you think it was a legal act?—A. I think it was all

right, unless done in anticipation of war. If it was found to be in immediate anticipation of war, and a belligerent had captured the vessel, she would have been confiscated.

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In the examination of Professor WESTLAKE—

6911. Q. (Lord BALFOUR, chairman.) Do you think you have anything to add as to the question of the transfer from British owners of a ship flying the British flag to a neutral flag in time of hostilities? Do you regard the possibility of the transfer of a ship from the British flag to a neutral flag as a proximate danger, and a danger which you would apprehend would take place?—A. Yes, it would be a danger which would take place, but perhaps not in the early part of the war to the extent which has been often supposed, because the transfer of a ship from a belligerent flag to a neutral one, if it is to have the effect intended in the prize court, must be a genuine out-and-out transfer. If there is reason to suspect its genuineness, the prize court would inquire into it, and it might take a ship which was apparently neutral-owned as being substantially still in British ownership. Especially at the commencement of war, there would be great difficulty in finding sufficient neutral capital to pay for genuine out-and-out transfers of British ships on a very large scale. I think that especially in the early part of a war the number of ships so transferred or apparently transferred, which would be brought in for adjudication in the hope that an inquiry by the prize court might discover the transfer not to be genuine, would be very great; and in such cases even if transfers were declared genuine, and the ships escaped condemnation, there would be great delay and expense to their owners. Consequently, I doubt very much whether in the early part of a war the rate of insurance upon the transferred ships would be so much lower than the rate of insurance upon British ships, as is commonly supposed. But if the war continued, that effect would of course wear away, and after two or three years of war, the rates of insurance on British ships and neutral ships would no doubt be very different indeed.

6912. Q. You referred just now to the prize court inquiring into the genuineness of a transfer. Do you think the prize court would go behind the actual nominal papers which are in the vessels? If the papers were correct, would they go into the question of bona fide ownership?—A. Undoubtedly they would—they would go into all the circumstances attendant on the sale.

6913. Q. Would you agree with the expression of opinion which I think I am not misrepresenting Professor Holland in saying he put before us to-day, that if all that they found was a single owner belonging to the nation—a British owner in this case—with which the other country was at war, the whole vessel would be condemned?—A. The French principle is not to look at the nationality of the owners, or the proportion in which they are

owners, but at the right to carry the flag. The nationality of the owners might come in incidentally in this way, that the country might make the right to carry its flag dependent upon the ships which are to enjoy that right being owned wholly, or in a given proportion, by subjects of that country. But directly as a motive of condemnation, the French courts would not regard the circumstances of ownership, but they would regard the right to carry the flag. The right to carry the flag must, of course, be a genuine one, and if the sale was found not to be a genuine one, that would impair the right to carry the flag, and the flag would be held then to be carried fraudulently.

6914. Q. By what machinery would the prize court get at the register of owners; would it not have to take the transfer papers as valid; how could they go behind them?—A. They might put interrogatories to the parties concerned as to the existence of any agreement attending the transfer.

6915. Q. Naturally; and there would be some hard swearing, no doubt?—A. Yes.

6916. Q. Could the prize court effectively get at the documents which would prove the want of bona fides?—A. I think they would in a great many cases. A great number of ships in different wars have been condemned upon that ground.

Such a discussion shows that opinion varies upon many points. In another part of the same report is the following statement:

Nationality of vessels.—Before leaving the topic of the treatment to be accorded to different classes of ships, it may be well to add a few observations as to the tests which are decisive in respect of a ship's nationality, and as to the requisites for the valid transfer of a ship from one nationality to another. It appears that, as a general principle, believed to prevail on the Continent, as well as in Great Britain and the United States, the flag, pass, and certificate of registry with which a ship sails are, as evidence of nationality, conclusive against her, but not in her favor. A belligerent is, however, entitled to go behind these *indicia*, and to inquire into the nationality of the owner, or owners, of the vessel; or, according to the British system, into their *commercial domicile*, i. e., the country in which they, or any one of them, trades, or resides while trading elsewhere. It would seem that, should the ship belong to a company, her nationality will be that of the country in which the company has its corporate existence. A visiting cruiser will not, indeed perhaps can not, inquire into the nationality of the shareholders in the company, who, as was held in the old case of R. *v.* Arnaud, are not in law the "owners" of the ship. Although, therefore, the presence of even one alien among the owners of a ship would disqualify her for being regis-

tered as British, she might be registered if owned by a British company every shareholder of which is an alien. (Report of the Royal Commission on Supply of Food and Raw Material in Time of War, Vol. I, p. 24, sec. 104.)

Conditions requisite to nationality.—The conditions under which a vessel may gain full nationality vary in different states according to local laws and regulations. Most states place little or no restriction upon national construction as an essential for the acquisition of nationality. The United States, with few exceptions, requires national construction for ownership. Some other states impose somewhat similar restrictions, as in case of Portugal and Mexico. The United States statute prescribes in general that vessels must not only be built in the United States but must belong wholly to citizens thereof. National ownership in some form is quite generally required for national registry. Some countries require, however, that only a greater part of the vessel, or a certain proportion, as five-eighths, shall be owned by citizens. The regulations in regard to the nationality of the crew vary greatly. Some states impose no conditions; others require that officers and all the crew be of the nationality of the flag. Between these extremes are regulations such as the following: Captain, national; captain and one-fifth of the crew, national; one-fourth of all, national; the captain and one-third of the crew, national; the captain and the greater part of the crew, national; the captain and two-thirds of the crew, national; the captain and three-fourths of the crew, national, etc.

Such variations make evident the need of some regulation of the method of transfer in order that the validity of the right to fly the flag may be sustained. Some states admit the right of the vessel to fly the national flag even though the vessel may not be allowed national registry.

Existing regulations.—Certain states have issued regulations in regard to the treatment of vessels in regard to whose right to fly the flag there may be any doubt. The regulations issued by Great Britain are the most complete and definite.

The British Manual of Naval Prize Law states that—

The commander will be justified in treating as an enemy vessel—

* * * * * * *

4. Any vessel apparently owned by a British, allied, or neutral subject, as hereinafter defined, if such person has acquired the ownership by a transfer from an enemy made after the vessel had started upon the voyage during which she is met with, and has not yet actually taken possession of her.

5. Any vessel apparently owned by a British, allied, or neutral subject, if such person has acquired the ownership by a transfer from an enemy made at any time during the war, or previous to the war but in contemplation of its breaking out, unless there is satisfactory proof that the transfer was bona fide and complete. In the event of such transfer being alleged, the commander should call for the bill of sale, and also for any papers or correspondence relating to the same. If the bill of sale is not forthcoming, and its absence is unaccounted for, he should detain the vessel. If the bill of sale is produced, its contents should be carefully examined, especially in the following particulars:

(*a*) The name and residence of the vendor; (*b*) the name and residence of the purchaser; (*c*) the place and date of the purchase; (*d*) the consideration money and the receipt; (*e*) the terms of the sale; (*f*) the service of the vessel and the name of the master, both before and after the transfer. (P. 6.)

The British regulations also state that—

The commander will be justified in treating as a British vessel—

Any vessel apparently owned by a person having a neutral commercial domicile, if such person has acquired the ownership by a transfer from a British subject made after the vessel had started upon the voyage during which she is met with, and has not yet actually taken possession of her.

Any vessel apparently owned by a person having a neutral commercial domicile, if such person has acquired the ownership by a transfer from a British subject made at any time during the war, or previous to the war but in contemplation of its breakout, unless there is satisfactory proof that the transfer was bona fide and complete. (Manual of Naval Prize Law, 1888, p. 13.)

Of neutral vessels the British Manual of Naval Prize Law (1888) says:

A vessel apparently owned by a neutral is not really so owned if acquired by a transfer from an enemy, or from a British or allied subject, made after the vessel had started on the voyage during which she is met with, and the transferee has not actually taken possession of her.

A vessel apparently owned by a neutral is not really so owned if acquired by a transfer from an enemy, or from a British or allied subject, made at any time during the war, or previous to the war but in contemplation of its breaking out, unless there is satisfactory proof that the transfer was bona fide and complete. (P. 16.)

The Japanese regulations resemble the British:

ART. VI. The following are enemy vessels:

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4. Vessels, the ownership of which has been transferred before the war, but in expectation of its outbreak or during the war, by the enemy state or its subjects to persons having residence in Japan or a neutral state, unless there is proof of a complete and bona fide transfer of ownership.

In case the ownership of a vessel is transferred during its voyage, and actual delivery is not effected, such transfer of ownership shall not be considered as complete and bona fide. (Japanese Regulations Governing Captures at Sea, 1904.)

The rules in regard to maritime prize, adopted by the Institute of International Law in 1888, provide in regard to the transfer of an enemy's vessel in time of war:

SEC. 26. L'acte juridique constatant la vente d'un navire ennemi faite durant la guerre doit être parfait, et le navire doit être enregistré conformément à la registration du pays dont il acquere la nationalité, avant qu'il quitte le port de sortie. La nouvelle nationalité ne peut être acquise au navire par une vente faite en cours de voyage.

Summary.—The nature of the decisions of the courts, the temptations to make transfers *in transitu*, the lack of uniformity in treaty provisions, the variation in practice as to what is necessary to constitute nationality or requisite for registry, the importance of transfer of flag on the conduct of war, the existing rules in regard to transfer of flag in time of war, all show the necessity of some regulation which shall be generally binding. It would seem that the following regulations would accord with reasonable demands for restrictions.

Conclusion.—(*a*) The transfer of vessels, when completed before the outbreak of war, even though in anticipation of war, is valid if in conformity to the laws of the state of the vendor and of the vendee.

(*b*) The transfer of a private vessel from a belligerent's flag during war is recognized by the enemy as valid only

when bona fide and when the title has fully passed from the owner and the actual delivery of the vessel to the purchaser has been completed in a port outside the jurisdiction of the belligerent states in conformity to the laws of the state of the vendor and of the vendee.

Topic III.

What regulations should be made in regard to the treatment of vessels of one belligerent bound for or within the ports of the other belligerent at the outbreak of war?

CONCLUSION.

1. Each state entering upon a war shall announce a date before which enemy vessels bound for or within its ports at the outbreak of war shall under ordinary conditions be allowed to enter, to discharge cargo, to load cargo, and to depart, without liability to capture while sailing directly to a permitted destination. If one belligerent state allows a shorter period than the other, the other state may, as a matter of right, reduce its period to correspond therewith.

2. Each belligerent state may make such regulations in regard to sojourn, conduct, cargo, destination, and movements after departure of the innocent enemy vessels as may be deemed necessary to protect its military interests.

3. A private vessel suitable for warlike use, belonging to one belligerent and bound for or within the port of the other belligerent at the outbreak of war, is liable to be detained unless the government of the vessel's flag makes a satisfactory agreement that it shall not be put to any warlike use, in which case it may be accorded the same treatment as innocent enemy vessels.

DISCUSSION AND NOTES.

Early opinions.—Molloy, writing in the latter part of the seventeenth century, says:

> If the ships of any nation happen to arrive in any of the King of England's ports, and afterwards, and before their departure, a war breaks out, they may be secured, privileged without harm of body or goods; but under this limitation, till it be known to the King, how the *Prince* or *Republick* of those, whose subjects the parties are, have *used and treated those of our nation in their ports*. But if any should be so bold as to visit our ports after a war is begun, they are to be dealt with as enemies. (De Jure Maritimo, Bk. I, c. I, XVII.)

The subjects of one of the belligerent states found within the jurisdiction of the other belligerent at the

outbreak of war were liable to be detained as prisoners of war in early times. Their property was also liable to seizure. Ayala, in 1579, approved the practice of detaining the persons. Grotius, in 1625, permitted it as a means of weakening the enemy. Bynkershoek, in 1737, however, mentions it as a right seldom used. Napoleon did detain some English tourists in 1803.

A treaty of the United States and Great Britain, ratified in 1795, provided:

ART. XXVI. If at any time a rupture should take place (which God forbid) between His Majesty and the United States, the merchants and others of each of the two nations residing in the dominions of the other shall have the privilege of remaining and continuing their trade, so long as they behave peaceably and commit no offense against the laws; and in case their conduct should render them suspected, and the respective Governments should think proper to order them to remove, the term of twelve months from the publication of the order shall be allowed them for that purpose, to remove with their families, effects, and property, but this favor shall not be extended to those who shall act contrary to the established laws.

Later practice as to persons.—The custom of allowing subjects of one of the belligerent states to sojourn in the other belligerent state during good behavior has now become quite generally recognized. For special reasons, however, the enemy subjects are sometimes expelled, as in the early days of the Boer war in 1899. At the commencement of the Russo-Japanese war a regulation which bore severely on many Japanese in the Far East was issued by Russia February 27, 1904:

1. Les sujets du Japon sont autorisés à continuer sous la protection des lois russes leur séjour et l'exercice de professions paisibles dans l'Empire de Russie à l'exception des territoires faisant partie de la Lieutenance Impériale en Extrême-Orient. (Journal de St. Pétersbourg, 16 (29) fevrier, 1904.)

This made possible the immediate expulsion of Japanese who had perhaps built up trade which could not be immediately discontinued without great hardship. The Japanese did not make similar regulations. Those Russians who remained in Japan were required to register, as were the Chinese during the Chino-Japanese war.

It may be said that as a general rule the belligerent does not drive out of his jurisdiction subjects of his opponent. Many treaties specifically provide for their sojourn. The treaty of the United States with Italy in 1871 reads as follows:

ART. XXI. If by any fatality which can not be expected, and which may God avert, the two contracting parties should be engaged in a war with each other, they have agreed, and do agree, now for then, that there shall be allowed the term of six months to the merchants residing on the coasts and in the ports of each other, and the term of one year to those who dwell in the interior, to arrange their business and transport their effects wherever they please with the safe conduct necessary to protect them and their property, until they arrive at the ports designated for their embarkation. And all women and children, scholars of every faculty, cultivators of the earth, artisans, mechanics, manufacturers and fishermen, unarmed and inhabiting the unfortified towns, villages, or places, and, in general, all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt, or otherwise destroyed, nor their fields wasted by the armed force of the belligerent in whose power, by the events of war, they may happen to fall; but if it be necessary that anything should be taken from them for the use of such belligerent, the same shall be paid for at a reasonable price.

And it is declared that neither the pretence that war dissolves treaties, nor any other whatever, shall be considered as annulling or suspending this article; but on the contrary, that the state of war is precisely that for which it is provided, and during which its provisions are to be sacredly observed, as the most acknowledged obligations in the law of nations.

Later practice as to vessels.—The French declaration of March 27, 1854, states:

ART. I. Six weeks from the present date are granted to Russian ships of commerce to quit the ports of France. Those Russian ships which are not actually in our ports, or which may have left the ports of Russia previously to the declaration of war, may enter into French ports, and remain there for the completion of their cargoes, until the 9th of May, inclusive.

The British order in council of March 29, 1854, stated that—

Her Majesty, being compelled to declare war against His Imperial Majesty the Emperor of all the Russias, and being desirous to lessen as much as possible the evils thereof, is pleased, by and

with the advice of her Privy Council, to order, and it is hereby ordered, that Russian merchant vessels, in any ports or places within Her Majesty's dominions, shall be allowed until the 10th day of May next, six weeks from the date hereof, for loading their cargoes and departing from such ports or places; and that such Russian merchant vessels, if met at sea by any of Her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers it shall appear that their cargoes were taken on board before the expiration of the above term: *Provided*, That nothing herein contained shall extend to or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any dispatch of or to the Russian Government.

And it is hereby further ordered by Her Majesty, by and with the advice of her Privy Council as aforesaid, that any Russian merchant vessel which, prior to the date of this order, shall have sailed from any foreign port bound for any port or place in Her Majesty's dominions, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation, and that any such vessel, if met at sea by any of Her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

On April 7, 1854, it was ordered that Russian merchant vessels then in port should be allowed thirty days in which to load and depart. Such vessels were not to be molested at sea provided their papers showed that they had sailed within the period.

On April 15 it was ordered that this principle should extend to Russian merchant vessels which, before May 15, had sailed from a Russian port of the Baltic Sea or White Sea for a British destination.

Days of grace in Spanish-American war.—By Article II of the Spanish decree of April 23, 1898, it was stated that—

A term of five days from the date of the publication of the present royal decree in the Madrid Gazette is allowed to all United States ships anchored in Spanish ports, during which they are at liberty to depart.

By the President's proclamation of April 25, 1898, war between the United States and Spain was declared to date from April 21, 1898, and it was declared that—

4. Spanish merchant vessels, in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for

loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; *Provided*, That nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish Government.

5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo, and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

The fourth clause of the above proclamation has received full judicial consideration from the Supreme Court of the United States in the case of the *Buena Ventura*. Mr. Justice Peckham, rendering the opinion of the court, says:

What is included by the words "Spanish merchant vessels in any ports or places within the United States shall be allowed until May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places"? At what time must these Spanish vessels be "in any ports or places within the United States" in order to be exempt from capture? The time is not stated in the proclamation, and therefore the intention of the Executive as to the time must be inferred. It is a case for construction or interpretation of the language employed.

The language is open to several possible constructions. It might be said that in describing Spanish merchant vessels in any ports, etc., it was meant to include only those which were in such ports on the day when the proclamation was issued, April 26. Or it might be held (in accordance with the decision of the district court) to include those that were in such ports on the 21st of April, the day that war commenced, as Congress declared. Or it might be construed so as to include not alone those vessels that were in port on that day, but also those that had sailed therefrom on any day up to and including the 21st of May, the last day of exemption, and were, when captured, continuing their voyage, without regard to the particular date of their departure from port, whether immediately before or subsequently to the commencement of the war or the issuing of the proclamation.

The district judge, before whom several cases were tried together, held that the date of the commencement of the war

(April 21) was the date intended by the Executive; that as the proclamation of the 22d of April gave thirty days to neutral vessels found in blockaded ports, it was but reasonable to consider that the same number of days, commencing at the outbreak of the war, should be allowed so as to bring it to the 21st of May, the day named; that although a retrospective effect is not usually given to stautes, yet the question always is, what was the intention of the legislature?

He also said that "the intention of the Executive was to fully recognize the recent practice of civilized nations, and not to sanction or permit the seizure of the vessels of the enemy within the harbors of the United States at the time of the commencement of the war, or to permit them to escape from ports to be seized immediately upon entering upon the high seas." (See preamble to proclamation.)

In the *Buena Ventura*, the case at bar, the district judge held that her case "clearly does not come within the language of the proclamation."

It is true the proclamation did not in so many words provide that vessels which had loaded in a port of the United States and sailed therefrom before the commencement of the war should be entitled to continue their voyage, but we think that those vessels are clearly within the intention of the proclamation under the liberal construction we are bound to give to that document.

An intention to include vessels of this class in the exemption from capture seems to us a necessary consequence of the language used in the proclamation when interpreted according to the known views of this Government on the subject and which it is to be presumed were the views of the Executive. The vessel when captured had violated no law, she had sailed from Ship Island after having obtained written permission, in accordance with the laws of the United States, to proceed to Norfolk in Virginia, and the permission had been signed by the deputy collector of the port and the fees therefor paid by the ship. She had a cargo of lumber, loaded but a short time before the commencement of the war, and she left the port but forty-eight hours prior to that event. The language of the proclamation certainly does not preclude the exemption of this vessel, and it is not an unnatural or forced construction of the fourth clause to say that it includes this case.

The omission of any date in this clause, upon which the vessel must be in a port of the United States, and prior to which the exemption would not be allowed, is certainly very strong evidence that such a date was not material, so long as the loading and departure from our ports were accomplished before the expiration of May 21. It is also evident from the language used that the material concern was to fix a time in the future, prior to the expiration of which vessels of the character named might sail

from our ports and be exempt from capture. The particular time at which the loading of cargoes and sailing from our ports should be accomplished was obviously unimportant, provided it was prior to the time specified. Whether it was before or after the commencement of the war, would be entirely immaterial. This seems to us to be the intention of the Executive, derived from reading the fourth clause with reference to the general rules of interpretation already spoken of, and we think there is no language in the proclamation which precludes the giving effect to such intention. Its purpose was to protect innocent merchantmen of the enemy who had been trading in our ports from capture, provided they sailed from such ports before a certain named time in the future, and that purpose would be wholly unaffected by the fact of a sailing prior to the war. That fact was immaterial to the scheme of the proclamation, gathered from all its language.

We do not assert that the clause would apply to a vessel which had left a port of the United States prior to the commencement of the war and had arrived at a foreign port and there discharged her cargo, and had then left for another foreign port prior to May 21. The instructions to United States ships, contained in the fourth clause, to permit the vessels "to continue their voyage" would limit the operation of the clause to those vessels that were still on their original voyage from the United States, and had taken on board their cargo (if any they had) at a port of the United States before the expiration of the term mentioned. The exemption would probably not apply to such a case as *The Phœnix* (Spink's Prize Cases, 1). That case arose out of the English order in council, made at the commencement of the Crimean war. The vessel had sailed from an English port in the middle of February, 1854, with a cargo, bound for Copenhagen, and having reached that port and discharged her cargo by the middle of March, she had sailed therefrom on the 10th of April, bound to a foreign port, and was captured on the 12th of April while proceeding on such voyage. The order in council was dated the 29th of March, 1854, and provided that "Russian merchant vessels, in any ports or places within Her Majesty's dominions, shall be allowed until the tenth day of May next, six weeks from the date hereof, for loading their cargoes and departing from such ports or places," etc. The claim of exemption was made on the ground that the vessel had been in an English port, and although she sailed therefrom in the middle of February to Copenhagen and had there discharged her cargo, before the order in council was promulgated, yet it was still urged that she was entitled to exemption from capture. The court held the claim was not well founded, and that it could not by any latitude of construction hold a vessel to have been in an English port on the 29th of March, which on that day was lying in the port of Copenhagen, having at that time discharged the cargo which she had taken

from the English port. It is true the court took the view that the vessel must at all events have been in an English port on the 29th of March in order to obtain exemption, and if not there on that day, the vessel did not come within the terms of the order and was not exempt from capture. From the language of the opinion in that case it would seem not only that a vessel departing the day before the 29th of March would not come within the exemption, but that a vessel arriving the day after the 29th, and departing before the 10th of May following, would also fail to do so; that the vessel must have been in an English port on the very day named, and if it departed the day before or arrived the day after, it was not covered by the order.

The French Government also, on the outbreak of the Crimean war, decreed a delay of six weeks, beginning on the date of the decree, to Russian merchant vessels in which to leave French ports. Russia issued the same kind of a decree, and other nations have at times made the same provisions. It is claimed that they confine the exemption to vessels that are actually within the ports of the nation at the date of issuing the decree or order.

We are not inclined to put so narrow a construction upon the language used in this proclamation. The interpretation which we have given to it, while it may be more liberal than the other, is still one which may properly be indulged in.

If this vessel, instead of sailing on the 19th, had not sailed until the 21st of April, the court below says she would have been exempt from capture. In truth, she was from her character and her actual employment just as much the subject of liberal treatment, and was as equitably entitled to an exemption when sailing on the 19th, as she would have been had she waited until the 21st. No fact had occurred since her sailing which altered her case in principle from the case of a vessel which had been in port on, though sailing after, the 21st. To attribute an intention on the part of the Executive to exempt a vessel if she sailed on or after the 21st of April, and before the 21st of May, and to refuse such exemption to a vessel in precisely the same situation, only sailing before the 21st, would as we think, be without reasonable justification. It may safely be affirmed that he never had any such distinction in mind and never intended it to exist. There is nothing in the nature of the two cases calling for a difference in their treatment. They both alike called for precisely the same rule, and if there be language in the clause or proclamation from which an inference can be drawn favorable to the exemption, and none which precludes it, we are bound to hold that the exception is given. We think the language of the proclamation does permit the inference and that there is none which precludes it.

We are aware of no adjudications of our own court as to the meaning to be given to words similar to those contained in the

proclamation, and it may be that a step in advance is now taken upon this subject. Where, however, the words are reasonably capable of an interpretation which shall include a vessel of this description in the exemption from capture, we are not averse to adopting it, even though this court may be the first to do so. If the Executive should hereafter be inclined to take the other view, the language of his proclamation could be so altered as to leave no doubt of that intention, and it would be the duty of this court to be guided and controlled by it. (175 U. S. Supreme Court Reports, 384.)

Days of grace in Russo-Japanese war.—The wars of the latter half of the nineteenth century were in the main land wars. In such wars the rights of neutrals being ordinarily little involved, tended to become established. Maritime rights also tended to become fixed and liberal and assimilated to land rights. In the Spanish-American and in the South African wars, neutrals were not much involved nor were maritime rights largely involved. The Russo-Japanese war of 1904–5, however, being to a considerable extent a naval war, has brought questions of neutral and maritime rights into prominence. Much more deliberation and forbearance has been shown by all parties in dealing with questions raised during the Russo-Japanese war, because the states involved as neutrals are states having and relying on naval power. These states therefore realize that positions which they may assume in the early days of the twentieth century may later be quoted against them. There has consequently been a tendency to look with tolerance on the extension of belligerent activities.

The Japanese ordinance relating to the exemption of Russian merchant vessels from seizure was published February 9. It provided—

ART. I. Russian merchant ships which happen to be moored in any Japanese port at the time of the issue of the present rules may discharge or load their cargo and leave the country not later than February 16.

ART. II. Russian merchant ships which have left Japan in accordance with the foregoing article and which are provided with a special certificate from the Japanese authorities shall not be captured if they can prove that they are steaming back direct to the nearest Russian port, or a leased port, or to their original destination; this measure shall, however, not apply in case such

the days of grace down to a minimum, is almost certain to do so, especially if its own sea-borne commerce is so small that little is to be feared from retaliatory measures. But, quite apart from purely mercantile considerations, we must reckon here, as in many other questions, with the changed conditions of modern warfare. If a sea-going fleet is to be effective for long together, it must be followed by a train of colliers, supply ships, repairing vessels, and hosts of others, carrying all the numerous requirements of a navy which is a mass of complicated machinery, and is afflicted with an insatiable hunger for coal. If, on a sudden outbreak of war, a belligerent finds his ports full of merchantmen belonging to enemy owners, and well adapted for the purposes I have described, he may capture them all, dispensing with days of grace entirely, and taking full advantage of the opportunity which fortune has placed in his hands. In such a case it would be curious to see whether the desire to injure the enemy would prevail over the fear of offending neutrals, by causing a great dislocation of trade in which some of them are sure to be interested. Certainly it will be wise for British shipowners to read the signs of the times, and not calculate upon a continuance in future of the indulgences which have been accorded in recent years on the outbreak of hostilities to the merchantmen of the belligerent states. There is one class of vessel against which the full rights of war will almost certainly be exercised. I refer to swift liners, built on designs which make them easily adaptable for warlike purposes, and liable to be taken over by their governments in the event of hostilities. It would be criminal folly for a state to permit the departure of any such ships of enemy nationality which happened to be in its ports at the outbreak of a great war. (War and Neutrality in the Far East, 2d ed., p. 53.)

Treatment of vessels adapted for use in war.—One of the most difficult questions in the conduct of maritime warfare in modern times is the determination of the method of treatment of vessels which though in time of peace are commercial vessels, yet in time of war are easily converted into vessels of war. If such vessels are in or come into port of one of the belligerents and belong to the other belligerent it is hardly reasonable to expect that they will be allowed freely to depart to augment the military forces of the other belligerent. It is very difficult to draw the line between vessels which may and which may not be converted to usefulness in war. Fast steamers may be of service as scouts even though not fitted for carrying heavy guns, slow steamers of large capacity may be of service as colliers, indeed at the present

Russian merchant ships have once touched at a Russian port or a leased port.

ART. III. Russian steamers which may have left for a Japanese port before February 10 may enter our ports, discharge their cargo at once, and leave the country. The Russian steamers coming under the above category shall be treated in accordance with Article II.

ART. IV. Russian steamers carrying contraband of war of any kind whatever shall be excluded from the above rules.

Thus Japan allowed seven days of grace.

On February 14, 1904, the Russian Government issued the following rules:

I. Japanese subjects are allowed to continue, under the protection of the Russian laws, their sojourn and the exercise of peaceful occupations in the Russian Empire excepting in the territories which are under the control of the imperial viceroy in the Far East.

II. Japanese trading vessels which were in Russian ports or havens at the time of the declaration of the war are authorized to remain at such ports before putting out to sea with goods which do not constitute articles of contraband during the delay required in proportion to the cargo of the vessel, but which in any case must not exceed forty-eight hours from the time of the publication of the present declaration by the local authorities.

Thus a limit of time not to exceed forty-eight hours from the publication of the imperial order was allowed.

Speaking of the days of grace allowed by Russia and Japan in 1904, Professor Lawrence says:

The sea-borne trade of Russia in the northern Pacific is not large in extent or enormous in value. She can afford to see it suffer with equanimity. Japan, on the other hand, has much to lose. Of late the increase of her mercantile marine has been as remarkable as the growth of her fighting navy. She has taken over a large number of its best vessels to act as transports. It is impossible to exaggerate the value of such service to a state which must attack its foe with armies sent across the seas. Perhaps it was the consciousness of this which caused Russia to cut down her days of grace to a minimum. The incident should be a warning to us of what we may expect if we should be engaged in war with a maritime power. In this matter, when belligerents are bound by no definite rules of universal acceptance, they will naturally consult their own interests, though we may hope that cases will sometimes occur in which other considerations will be present to their minds. A power which sees a chance of striking a severe blow at its enemy's trade by cutting

time nearly all vessels aside from sailing vessels are easily converted to some war use. A belligerent having or receiving in its ports such vessels of the opponent would be using only reasonable precaution in making sure that they should not go forth to his injury. Still more necessary would it be to provide for cases of vessels subsidized or otherwise wholly or partly controlled by the enemy's government. That such vessels are liable to treatment as war vessels is shown in the decision of the Supreme Court of the United States in 1900 in the case of the *Panama*. The résumé of the case as given by the court is as follows:

The *Panama* was a steamship of 1,432 tons register, carrying a crew of 71 men all told, owned by a Spanish corporation, sailing under the Spanish flag, having a commission as a royal mail ship from the Government of Spain, and plying from and to New York and Havana and various Mexican ports, with general cargoes, passengers, and mails. At the time of her capture, she was on a voyage from New York to Havana, and had on board two breech-loading Hontoria guns of 9-centimeter bore, one mounted on each side of the ship, one Maxim rapid-firing gun on the bridge, 20 Remington rifles and 10 Mauser rifles, with ammunition for all the guns and rifles, and 30 or 40 cutlasses. The guns had been put on board three years before, and the small arms and ammunition had been on board a year or more. Her whole armament had been put on board by the company in compliance with its mail contract with the Spanish Government (made more than eleven years before and still in force), which specifically required every mail steamship of the company to "take on board, for her own defense," such an armament, with the exception of the Maxim gun and the Mauser rifles.

That contract contains many provisions looking to the use of the company's steamships by the Spanish Government as vessels of war. Among other things, it requires that each vessel shall have the capacity to carry 500 enlisted men; that that Government, upon inspection of her plans as prepared for commercial and postal purposes, may order her deck and sides to be strengthened so as to support additional artillery; and that, in case of the suspension of the mail service by a naval war, or by hostilities in any of the seas or ports visited by the company's vessels, the Government may take possession of them with their equipment and supplies, at a valuation to be made by a commission; and shall, at the termination of the war return them to the company, paying 5 per cent on the valuation while it has them in its service, as well as an indemnity for any diminution in their value.

The *Panama* was not a neutral vessel, but she was enemy property, and as such, even if she carried no arms (either as part of her equipment or as cargo), would be liable to capture, unless protected by the President's proclamation.

It may be assumed that a primary object of her armament, and, in time of peace, its only object, was for purposes of defense. But that armament was not of itself inconsiderable, as appears, not only from the undisputed facts of the case, but from the action of the district court, upon the application of the commodore commanding at the port where the court was held, and on the recommendation of the prize commissioners, directing her arms and ammunition to be delivered to the commodore for the use of the Navy Department. And the contract of her owner with the Spanish Government, pursuant to which the armament had been put on board, expressly provided that, in case of war, that Government might take possession of the vessel with her equipment, increase her armament, and use her as a war vessel; and, in these and other provisions, evidently contemplated her use for hostile purposes in time of war.

She was, then, enemy property, bound for an enemy port, carrying an armament susceptible of use for hostile purposes, and herself liable, upon arrival in that port, to be appropriated by the enemy to such purposes.

The intent of the fourth clause of the President's proclamation was to exempt for a time from capture peaceful commercial vessels; not to assist the enemy in obtaining weapons of war. This clause exempts "Spanish merchant vessels" only; and expressly declares that it shall not apply to "Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage) or any other article prohibited or contraband of war, or any dispatch of or to the Spanish Government."

Upon full consideration of this case, this court is of opinion that the proclamation, expressly declaring that the exemption shall not apply to any Spanish vessel having on board any article prohibited or contraband of war, or a single military or naval officer, or even a dispatch, of the enemy, can not reasonably be construed as including, in the description of "Spanish merchant vessels" which are to be temporarily exempt from capture, a Spanish vessel owned by a subject of the enemy; having an armament fit for hostile use; intended, in the event of war, to be used as a war vessel; destined to a port of the enemy; and liable, on arriving there, to be taken possession of by the enemy, and employed as an auxiliary cruiser of the enemy's navy, in the war with this country.

The result is, that the *Panama* was lawfully captured and condemned, and that the decree of the district court must be affirmed. (176 U. S. Supreme Court Reports, 535.)

From the decision of the court it is evident that vessels liable to be employed as auxiliary cruisers and under contract with the enemy government are liable to treatment as war vessels. The presence of a contract may not, however, materially alter the actual results, as a vessel of such character as may be readily converted into a vessel of use in war may on arriving in its own country be appropriated by its government for such use. If such vessels of one belligerent are to be allowed to leave the ports of the other there must be therefore some agreement which shall be binding on the two belligerents under which they shall be allowed to leave. The essential part of such agreement would be that they should not be used for warlike purposes if allowed to depart. The aim of the regulation is not to interfere with commerce but to prevent the increase of the war resources of the enemy, thus giving to commerce greater freedom without introducing complications consequent upon the possession of a doubtful character by the vessel.

Lieutenant Bellairs, writing from a British point of view, in August, 1905, says of Great Britain:

> In any case, she has considerable reasons for extending the period of grace for merchant vessels after the declaration of war, as was done by the United States in the war with Spain. A special exception would have to be made in the case of enemy's vessels suitable for war purposes as mercantile cruisers. A good example is not enough, for neither Russia nor Japan has followed the United States in the present war. There is no reason under international law at present why British vessels on the sea, or in her opponent's ports when war breaks out, should obtain any days of grace whatever. The contention might be advanced that every vessel is suitable for collier, transport, or some form of auxiliary for war purposes. (181 North American Review, p. 170.)

Rule of Institute of International Law.—At the session of the Institute of International Law in 1898 the following rule was adopted:

> ART. 40. Les navires de commerce qui, au début des hostilités ou hors de la déclaration de guerre, se trouvent dans un port ennemi, ne sont pas sujets à saisie, dans le délai déterminé par les autorités. Pendant ce délai ils peuvent y décharger leur cargaison et en prendre une autre. (Annuaire, 1898, p. 284.)

Conditions modifying restrictions.—Certain proclamations have allowed longer or shorter periods to the enemy merchant vessels according as they sailed from remote or from neighboring ports. Sometimes allowance has been made according to the character of the vessel, a longer time for sailing vessels and a shorter time for steam vessels.

At the present time it is evident that the object of war is not the destruction of private property on land or sea. The restriction of the movements of commerce particularly to and from its own ports may be a greater damage to a belligerent thus acting than to the opposing belligerent. There seems to be no sufficient reason why the innocent trade between states that may possibly be at war should be destroyed a long time before war actually exists simply because merchants anticipate seizure of vessels immediately on the outbreak of hostilities. It would seem better for both belligerents that the effects of the war should so far as possible be confined to the period of the war. In order that this may be accomplished there must be reasonable assurance that vessels sailing on commercial undertakings before the outbreak of war will be allowed to complete their undertakings so far as these do not interfere with the conduct of the war. It would not be reasonable to demand that a vessel be permitted to sail with a permit to enter a blockaded port merely because the original plan of the voyage had contemplated such a course. It would not be necessary to allow a vessel to load with contraband because this had been the cargo which she had originally planned to take. It would not be necessary to allow a sojourn of a period which the vessel had originally in the schedule of its voyage. Reasonable treatment of such character as would not affect the conduct of the hostilities should be accorded. Such a course seems to be in harmony with recent practice. It can safely be said that ordinary merchant vessels of one belligerent in the port of the other belligerent at the outbreak of war should be allowed time to load and depart.

Vessels of one belligerent bound for or within the ports of the other belligerent may be of different classes.

Public vessels adapted for warlike purposes would hardly be allowed to leave port. Of course such vessels would rarely be in an enemy port at the outbreak of war.

Public vessels engaged in purely philanthropic or scientific undertakings would be permitted to depart. Such vessels would include hospital ships and ships engaged in exploration.

It is now becoming very difficult to determine exactly what constitutes a merchant vessel, but if there is satisfactory evidence that a private vessel of a belligerent is a merchant vessel then she should be allowed the fullest freedom consistent with military expediency. Many reasons might make it necessary to delay or altogether prevent the departure of such a vessel, e. g., if the vessel were in a port used as a base of military operations which it was deemed necessary to keep secret, or if the merchantman might naturally be supposed to have obtained military information which should not be disclosed to the enemy, even though no guilt might attach to the merchantman.

The movement of yachts, pleasure vessels, and other new forms of transportation may need to be regulated as well as those of merchant vessels. It is therefore necessary that the regulations be more general than heretofore and be made to apply to private vessels in distinction from public vessels; yachts and pleasure vessels ordinarily need little time for loading necessary supplies and departure. The sojourn of such vessels may have all the consequences of the sojourn of a merchant vessel.

It seems to be evident that it might be necessary or expedient to deny the right to depart to certain vessels, possibly to seize and hold some, and to regulate the movements of all, because even though a hospital ship might be innocent in character its crew might possess such knowledge of a belligerent's plans as to make it necessary to detain the ship for a time.

Summary.—From the above discussion it would seem proper to draw certain conclusions in regard to the treatment of vessels of one belligerent bound for or within the port of the other belligerent.

(*a*) Under supervision of government exercising jurisdiction over the port, a reasonable and limited period should be allowed for innocent enemy vessels to depart.

(*b*) This period will vary according as the government may deem expedient.

(*c*) The period should be determined by the government giving due consideration to the rights of commerce and to military necessities.

(*d*) Vessels which are by nature closely connected with the military service of the other belligerent may be detained or seized.

(*e*) Vessels of a character easily converted into vessels of use in war may be detained or placed under guarantee not to enter military service.

The regulations which would bring about the proper practice in regard to the days of grace allowed to vessels of one belligerent bound for or within the port of the other belligerent at the outbreak of war apparently can not fix a definite number of days because of the varying conditions under which war may arise and the uncertainty which frequently prevails as to the date of its commencement. The government having jurisdiction over the port alone can establish the regulations for its use. Not all classes of vessels are entitled to the same exemptions from capture on the high seas or to the same exemptions in the ports of the other belligerent. Some period should be allowed for innocent belligerent vessels to load and depart from opponent's ports after war has begun. There should be an international agreement upon the principles in accord with which governments should act, as there has been so great diversity in practice hitherto that the burden of war has been made unnecessarily heavy in many instances. The burden thus placed on commerce does not affect belligerents alone, but in case of war between two or more great powers would rest upon other states not parties to the contest, which is manifestly unjust and leads to unfortunate complications and sometimes to attempts to make up by burdensome measures for losses sustained.

The time allowed for loading and departure of a private vessel of one belligerent in the port of the other belligerent

at the outbreak of war has varied greatly according to circumstances. Six weeks were allowed in certain cases in the Crimean war. Thirty days were allowed by the United States in the Spanish-American war and five days by Spain. In the Russo-Japanese war, Russia allowed forty-eight hours from the local publication of the Russian decree; Japan allowed seven days from February 9, 1904. It seems to be evident that there is no uniform practice in regard to the period to be allowed. Further, the conditions and circumstances of different wars are so varied that any period which might be fixed for all wars would be too long in case of certain wars and too short in case of others. New methods and means of warfare would need consideration from time to time, as would also new developments in commerce. It would therefore seem impossible to fix upon any exact period which should be allowed in all cases.

One state may regard it as of advantage to itself to allow a short period for loading and departure even after another state has allowed a longer period. The state allowing the longer period should be permitted to take such action as would not make its liberality a cause of injury to itself. Accordingly it must be permitted to reduce the period to that of the other belligerent.

There are in addition to merchant vessels many other innocent vessels which are not merchant vessels which may belong to one belligerent and be in the ports of the other at the outbreak of war. Such a vessel as a private yacht is of this class. It may be as necessary to regulate the sojourn and general conduct of a yacht as of a merchant vessel. The regulation therefore should be general to apply to all innocent private vessels.

There may be special military reasons making it important that vessels in a belligerent port shall not have unlimited freedom. It would not be reasonable to expect that in time of war the freedom in all respects would not be much more restricted than in time of peace. Certain ports from military reasons may be closed or enemy vessels may be sent out if deemed expedient. The course in such matters must be left to each state to determine.

Many private vessels may easily be adapted for use in war. It would hardly seem reasonable to allow such a vessel to return to a home port where it might be seized or turned over for war use. Such a vessel belonging to one belligerent and being within the jurisdiction of the other is liable to such reasonable treatment as the belligerent having authority over the vessel may determine, provided it is not contrary to the principles of international law. Certainly such a vessel should not be allowed to depart to strengthen the war resources of the enemy. It would be reasonable to detain such a vessel if its innocent use could not be guaranteed.

As it is not the purpose to interfere with commerce but merely to guard against the increase of the war resources of the enemy, it would be sufficient to bring about an agreement which would guarantee the belligerent in whose ports the vessel may be against any war use of the vessel if it should be allowed to depart. A guaranty of this kind would not interfere with commerce and would give to the belligerent desirous of extending liberal treatment to his opponent security against the abuse of his liberality.

To bring about fair treatment of merchant vessels of one belligerent by the authorities of the other belligerent and at the same time to prevent the use of such vessels for hostile purposes the following regulations are suggested:

Conclusion.—1. Each state entering upon a war shall announce a date before which enemy vessels bound for or within its ports at the outbreak of war shall under ordinary conditions be allowed to enter, to discharge cargo, to load cargo and to depart, without liability to capture while sailing directly to a permitted destination. If one belligerent state allows a shorter period than the other, the other state may, as a matter of right, reduce its period to correspond therewith.

2. Each belligerent state may make such regulations in regard to sojourn, conduct, cargo, destination, and movements after departure of the innocent enemy vessels as may be deemed necessary to protect its military interests.

3. A private vessel suitable for warlike use, belonging to one belligerent and bound for or within ports of the other belligerent at the outbreak of war, is liable to be detained unless the government of the vessel's flag makes a satisfactory agreement that it shall not be put to any warlike use, in which case it may be accorded the same treatment as innocent enemy vessels.

Topic IV.

What regulations should be made in regard to the supplying of fuel or oil to belligerent vessels in neutral ports?

CONCLUSION.

The supply of fuel or oil within a neutral port to vessels in belligerent service in no case shall exceed what is necessary to make the total amount on board sufficient to reach the nearest unblockaded port of the belligerent vessel's own state or some nearer named destination.

The supply may be subject to such other regulations as the neutral may deem expedient.

DISCUSSION AND NOTES.

Early ideas of neutral obligations.—Grotius, writing in 1625, in his brief reference to neutrality, lays down the principle that—

> It is the duty of those who have no part in the war to do nothing which may favor the party having an unjust cause, or which may hinder the action of the one waging a just war, * * * and in a case of doubt to treat both belligerents alike, in permitting transit, in furnishing provisions to the troops, in refraining from assisting the besieged. (De Jure Belli ac Pacis, Lib. III, C. XVI, iii, 1.)

Gustavus Adolphus said to George Frederick, Elector of Brandenburg:

> What sort of a thing is that—neutrality? I do not understand it. There is no such thing.

This shows only the beginning of the idea of neutrality, which was hardly regarded as a theoretical possibility in the seventeenth century. Gradually the idea became clear. In 1737 Bynkershoek gave the clue to the correct principle when he departed from the idea of impartiality and enunciated the principle of absence of participation by the neutral in the hostilities. He said:

> I call those *non hostes* who are of neither party.

In 1793 the attempt of M. Genêt to fit out privateers in the United States, supposed to be neutral in the war between France and Great Britain, showed the United States the folly of a treaty which might place the state in a doubtful position in time of war.

Neutrality in the sense in which it is now understood is largely a doctrine of the nineteenth century, and many of the ideas now commonly advanced date from about the middle of that century. Ortolan, writing at about this time, says:

> In default of treaty stipulations neutral ports and waters are an asylum open to the ships of the belligerent, especially if they appear in limited numbers; they are admitted to procure necessary provisions, and to make repairs which are essential to enable them again to put to sea and resume the operations of war, without any violations of its duties on the part of the neutral state.

Growing recognition of neutral obligations.—The declaration of Paris of 1856 did not clear up such points as are involved in supplying fuel to a belligerent vessel in a neutral port. Gradually circumstances, particularly the introduction of steam vessels, forced neutral states to make regulations in regard to the use of their ports by belligerent vessels. Neutral states had come to recognize that they had the right of control over belligerent vessels in their ports, and if they had the right they were beginning to realize that it carried a corresponding obligation. During the civil war in the United States the foreign nations began to emphasize the rule of twenty-four hour sojourn for belligerent ships in neutral ports. The proclamation of President Grant during the Franco-Prussian war in 1870 speaks of the "respective rights and obligations of the belligerent parties and of the citizens of the United States," and of the possibility "that armed cruisers of the belligerents may be tempted to abuse the hospitality accorded to them in the ports" of the United States. It then prescribes with much detail what may not be done by a belligerent vessel in United States ports. (This proclamation and references to precedents and opinions may be found in International Law Situations, Naval War College, 1904, pp. 63–78.) The decision and award on the

Alabama claims still further defined neutral rights and obligations. After citing decisions, etc., in regard to control of belligerent vessels in neutral ports, it is said in the Discussions of International Law Situations in 1904 that—

> Thus it is seen that the decision of the courts, proclamations, domestic laws, and regulations alike agree upon the growing tendency to prescribe more and more definitely the exact range of action which may be permitted to a belligerent war vessel in a neutral port. In no case is there a doubt that the neutral state has a right to make regulations upon this subject. The proclamations of neutrality issued in recent wars also show a tendency to become explicit in outlining belligerent rights in neutral ports. This has been particularly the case since the civil war in the United States and the adjustment of the *Alabama* claims. (P. 71.)

In the first year of the United States civil war the tendency was toward a somewhat liberal policy in regard to the supply of coal. In 1862, however, Lord John Russell limited the amount of coal to be supplied to belligerent vessels in British ports to so much only "as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination." The British proclamations of 1870, 1885, and 1898 were in the same words. That of February 10, 1904, made the last clause to read "or to some nearer named neutral destination."

In the case of the *Burton and Pinkerton* (Court of Exchequer, June 4, 1867, 2 Law Reports, 340) the headnote states that—

> To serve on board a vessel used as a storeship in aid of a belligerent, the fitting out of which to be so used is an offense within the 59 Geo. 3, c. 69, is a serving on board a vessel for a warlike purpose in aid of a foreign state within s. 2 of that act.

The United States proclamation of 1870 stated that the authorities were to require belligerent vessels to put to sea "as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use." The same words were used in the proclamation of February 11, 1904.

Recognition of neutral obligations in the Geneva arbitration.—The decision of the Geneva tribunal maintained that—

in order to impart to any supplies of coal a character inconsistent with the second rule, prohibiting the use of neutral ports or waters, as a base of naval operations for a belligerent, it is necessary that the said supplies should be connected with special circumstances of time, of persons, or of place, which may combine to give them such character. (4 Papers Relating to the Treaty of Washington, p. 50.)

In the opinion of Count Sclopis before the Geneva arbitration the question of the supply of coal was raised. He said:

I can only treat the question of the supply and shipment of coal as connected with the use of a base of naval operations directed against one of the belligerents, or a flagrant case of contraband of war.

I will not say that the simple fact of having allowed a greater amount of coal than was necessary to enable a vessel to reach the nearest port of its country constitutes in itself a sufficient grievance to call for an indemnity. As the Lord Chancellor of England said on the 12th of June, 1871, in the House of Lords, England and the United States equally hold the principle that it is no violation of international law to furnish arms to a belligerent. But if an excessive supply of coal is connected with other circumstances which show that it was used as a veritable *res hostilis* then there is an infringement on the second rule of Article VI of the treaty. (4 Papers Relating to the Treaty of Washington, p. 74.)

Mr. Adams argues as follows:

This question of coals was little considered by writers on the law of nations and by sovereign powers until the present century. It has become one of the first importance, now that the motive power of all vessels is so greatly enhanced by it.

The effect of this application of steam power has changed the character of war on the ocean, and invested with a greatly preponderant force those nations which possess most largely the best material for it within their own territories and the greatest number of maritime places over the globe where deposits may be conveniently provided for their use.

It is needless to point out the superiority in this respect of the position of Great Britain. There seems no way of discussing the question other than through this example.

Just in proportion to these advantages is the responsibilty of that country when holding the situation of a neutral in time of war.

The safest course in any critical emergency would be to deny altogether to supply the vessels of any of the belligerents, except perhaps in positive distress.

But such a policy would not fail to be regarded as selfish, illiberal, and unkind by all belligerents. It would inevitably lead to the acquisition and establishment of similar positions for themselves by other maritime powers, to be guarded with equal exclusiveness, and entailing upon them enormous and continual expenses to provide against rare emergencies.

It is not therefore either just or in the interest of other powers, by exacting severe responsibilities of Great Britain in time of war, to force her either to deny all supplies or, as a lighter risk, to engage herself in war.

It is in this sense that I approach the arguments that have been presented in regard to the supply of coals given by Great Britain to the insurgent American steamers as forming a base of operations.

It must be noted that, throughout the war of four years, supplies of coal were furnished liberally at first and more scantily afterwards, but still indiscriminately, to both belligerents.

The difficulty is obvious how to distinguish those cases of coals, given to either of the parties as helping them impartially to other ports, from those furnished as a base of hostile operations.

Unquestionably, Commodore Wilkes, in the *Vanderbilt*, was very much aided in continuing his cruise at sea by the supplies obtained from British sources. Is this to be construed as getting a base of operations?

It is plain that a line must be drawn somewhere, or else no neutral power will consent to furnish supplies to any belligerent whatever in time of war.

So far as I am able to find my way out of this dilemma, it is in this wise:

The supply of coals to a belligerent involves no responsibility to the neutral, when it is made in response to a demand presented in good faith, with a single object of satisfying a legitimate purpose openly assigned.

On the other hand, the same supply does involve a responsibility if it shall in any way be made to appear that the concession was made, either tacitly or by agreement, with a view to promote or complete the execution of a hostile act.

Hence I perceive no other way to determine the degree of the responsibility of a neutral in these cases than by an examination of the evidence to show the intent of the grant in any specific case. Fraud or falsehood in such a case poisons everything it touches. Even indifference may degenerate into willful negligence, and that will impose a burden of proof to excuse it before responsibility can be relieved.

This is the rule I have endeavored to apply in judging the nature of the cases complained of in the course of arbitration. (Ibid, p. 148.)

Sir Alexander Cockburn presented the British views, as follows:

But a novel and, to my mind, most extraordinary proposition is now put forward, namely, that if a belligerent ship is allowed to take coal, and then to go on its business as a ship of war, this is to make the port from which the coal is procured "a base of naval operations," so as to come within the prohibition of the second rule of the treaty of Washington.

We have here another instance of an attempt to force the words of the treaty to a meaning which they were never—at least so far as one of the contracting parties is concerned—intended to bear. It would be absurd to suppose that the British Government, in assenting to the rule as laid down, intended to admit that whenever a ship of war had taken in coal at a British port, and then gone to sea again as a war vessel, a liability for all the mischief done by her should ensue. Nor can I believe the United States Government had any such *arrière pensée* in framing the rule; as, if such had been the case, it is impossible to suppose that they would not have distinctly informed the British Government of the extended application they propose to give to the rule.

The rule of international law, that a belligerent shall not make neutral territory the base of hostile operations, is founded on the principle that the neutral territory is inviolable by the belligerent, and that it is the duty of the neutral not to allow his territory to be used by one belligerent as a starting point for operations against the other. This is nowhere better explained, as regards ships of war, than by M. Ortolan, in the following passage:

"Le principe général de l'inviolabilité du territoire neutre exige aussi que l'emploi de ce territoire reste franc de toute mesure ou moyen de guerre de l'un des belligérants contre l'autre. C'est une obligation pour chacun des belligérants de s'en abstenir; c'est aussi un devoir pour l'état neutre d'exiger cette abstention; et c'est aussi pour lui un devoir d'y veiller et d'en maintenir l'observation à l'encontre de qui que ce soit. Ainsi il appartient à l'autorité qui commande dans les lieux neutres, où des navires belligérants, soit de guerre, soit de commerce, ont été reçus de prendre des mesures nécessaires pour que l'asile accordé ne tourne pas en machination hostile contre l'un des belligérants; pour empêcher spécialement qu'il ne devienne un lieu d'où les bâtiments de guerre ou les corsaires surveillent les navires ennemis pour les poursuivre et les combattre, et les capturer lorsqu'ils seront parvenus au-delà de la mer territoriale. Une de ces

mesures consiste à empêcher la sortie simultanée des navires appartenant à des puissances ennemies l'une de l'autre."

It must be, I think, plain that the words "base of operations" must be accepted in their ordinary and accustomed sense, as they have hitherto been understood, both in common parlance and among authors who have written on international law. Now, the term "base of warlike operations" is a military term, and has a well-known sense. It signifies a local position which serves as a point of departure and return in military operations, and with which a constant connection and communication can be kept up, and which may be fallen back upon whenever necessary. In naval warfare it would mean something analogous—a port or water from which a fleet or a ship of war might watch the enemy and sally forth to attack him, with the possibility of falling back upon the port or water in question, for fresh supplies, or shelter, or a renewal of operations. (Ibid, p. 422.)

Proclamations in regard to use of neutral ports.—The Russian declaration of April 20 (May 2), 1898, during the Spanish-American war stated—

The Imperial Government further declares that the ships of war of the two belligerent powers may only enter Russian ports for twenty-four hours. In case of stress of weather, absence of goods or provisions necessary to the maintenance of the crew, or for indispensable repairs, the prolongation of the above-mentioned time can only be accorded by special authorization of the Imperial Government. (Foreign Relations, U. S., 1898, p. 897.)

One of the most detailed prescriptions in regard to the treatment of belligerent ships in neutral ports is contained in the Brazilian proclamation of April 29, 1898, which was reaffirmed in 1904:

VII.

Privateers, although they do not conduct prizes, shall not be admitted to the ports of the Republic for more than twenty-four hours, except in cases indicated in the preceding section.

VIII.

No ship with the flag of one of the belligerents, employed in the war, or destined for the same, may be provisioned, equipped, or armed in the ports of the Republic, the furnishing of victuals and naval stores which it may absolutely need and the things indispensable for the continuation of its voyage not being included in the prohibition.

IX.

The last provision of the preceding section presupposes that the ship is bound for a certain port, and that it is only *en route*

and puts into a port of the Republic through stress of circumstances. This, moreover, will not be considered as verified if the same ship tries the same port repeated times, or after having been relieved in one port should subsequently enter another, under the same pretext, except in proven cases of compelling circumstances. Therefore, repeated visits without a sufficiently justified motive would authorize the suspicion that the ship is not really *en route*, but is frequenting the seas near Brazil in order to make prizes of hostile ships. In such cases asylum or succor given to a ship would be characterized as assistance or favor against the other belligerent, being thus a breach of neutrality.

Therefore, a ship which shall once have entered one of our ports shall not be received in that or another shortly after having left the first, in order to take victuals, naval stores, or make repairs, except in a duly proved case of compelling circumstances, unless after a reasonable interval which would make it seem probable that the ship had left the coast of Brazil and had returned after having finished the voyage she was undertaking.

X.

The movements of the belligerent will be under the supervision of the custom authorities from the time of entrance until the departure, for the purpose of verifying the proper character of the things put on board.

XI.

The ships of belligerents shall take material for combustion only for the continuance of their voyage.

Furnishing coal to ships which sail the seas near Brazil for the purpose of making prizes of an enemy's vessels or prosecuting any other kind of hostile operations is prohibited.

A ship which shall have once received material for combustion in our ports shall not be allowed a new supply there, unless there shall have elapsed a reasonable interval which makes it probable that said ship has returned after having finished its voyage to a foreign port.

XII.

It will not be permitted to either of the belligerents to receive in the ports of the Republic goods coming directly for them in the ships of any nation whatever.

This means that the belligerents may not seek ports *en route* and on account of an unforseen necessity, while having the intention of remaining in the vicinity of the coasts of Brazil, taking thus beforehand the necessary precautions to furnish themselves with the means of continuing their enterprises. The tolerance of such an abuse would be equivalent to allowing

our ports to serve as a base of operations for the belligerents. (Foreign Relations, U. S., 1898, p. 847.)

The Belgian royal decree of February 18, 1901, gives quite full statement of its policy:

ART. XIII. In no case shall vessels of war or privateers of a nation engaged in a maritime war be furnished with supplies or means of repairs in excess of what is indispensable to reach the nearest port of their country, or of a nation allied to theirs in the war. The same vessel may not, unless specially authorized, be provided with coal a second time until the expiration of three months after a first coaling in a Belgian port.

ART. XIV. The vessels specified in the preceding article may not, with the aid of supplies taken in Belgian territory, increase in any way their war material nor strengthen their crews, nor make enlistments even among their own countrymen, nor execute, under the pretext of repairs, works of a nature to augment their military efficiency, nor land for the purpose of forwarding to their homes, by land routes, men, sailors, or soldiers happening to be on board.

ART. XV. They must abstain from any act intended to convert their place of refuge into a base of operation in any way whatever against their enemies, and also from any investigation into the resources, forces, or location of their enemies.

Other proclamations vary in stringency. The Danish proclamation of April 27, 1904, states:

So much coal only may be taken in as may be necessary to carry such vessels to the nearest nonblockaded home port, or, with permission from the proper Danish authorities, to some other neutral destination. No ship will be permitted, without special authorization, to coal in any Danish harbor or roadstead more than once in the course of three months. (Foreign Relations, U. S., 1904, par. 2, sec. 2, p. 22.)

The Danish proclamation of April 27, 1904, also provides:

The belligerents are not permitted to maintain coal depots on Danish territory. It is forbidden to clear from Danish harbors cargoes of coal directly destined for the fleets of the belligerents. This injunction does not, however, apply to coal brought from a harbor to the outlying roadstead intended to be used in compliance with the above provisions of paragraph 2, section 2. (Par. 5.)

The Norwegian neutrality decree of April 30, 1904, contains practically the same provisions in regard to coaling.

The Egyptian proclamation of February 12, 1904, requires from the commander a written statement of the destination of the ship and of the amount of coal on board.

The United States proclamation of February 11, 1904, prescribes that—

> No ship of war or privateer of either belligerent shall be permitted, while in any port, harbor, roadstead, or waters within the jurisdiction of the United States, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel, if without any sail power, to the nearest port of her own country; or in case the vessel is rigged to go under sail, and may also be propelled by steam power, then with half the quantity of coal which she would be entitled to receive, if dependent upon steam alone, and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, harbor, roadstead, or waters of the United States, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within the waters of the United States, unless such ship of war or privateer shall, since last thus supplied, have entered a port of the government to which she belongs. (Foreign Relations, U. S., 1904, p. 34.)

The proclamation of Sweden and Norway, April 30, 1904, provides as to belligerent vessels, that—

> They are forbidden to obtain any supplies except stores, provisions, and means for repairs necessary for the subsistence of the crew or for the security of navigation. In regard to coal, they can only purchase the necessary quantity to reach the nearest nonblockaded national port, or, with the consent of the authorities of the King, a neutral destination. Without special permission the same vessel will not be permitted to again purchase coal in a port or roadstead of Sweden or Norway within three months after the last purchase. (Foreign Relations, U. S., 1904, p. 31.)

It is also forbidden "the belligerent powers to establish coal depots on Swedish or Norwegian soil."

Policy and practice of Great Britain.—Hall says:

> Even during the American civil war ships of war were only permitted to be furnished with so much coal in English ports as might be sufficient to take them to the nearest port of their own country, and were not allowed to receive a second supply in the same or any other port, without special permission, until after the expiration of three months from the date of receiving such

coal. The regulations of the United States in 1870 were similar; no second supply being permitted for three months unless the vessel requesting it had put into a European port in the interval. There can be little doubt that no neutral states would now venture to fall below this measure of care; and there can be as little doubt that their conduct will be as right as it will be prudent. When vessels were at the mercy of the winds it was not possible to measure with accuracy the supplies which might be furnished to them, and as blockades were seldom continuously effective, and the nations which carried on distant naval operations were all provided with colonies, questions could hardly spring from the use of foreign possessions as a source of supplies. Under the altered conditions of warfare matters are changed. When supplies can be meted out in accordance with the necessities of the case, to permit more to be obtained than can, in a reasonably liberal sense of the word, be called necessary for reaching a place of safety, is to provide the belligerent with means of aggressive action; and consequently to violate the essential principles of neutrality. (International Law, 5th ed., p. 606.)

In the time of war it is generally accepted that merchants of a neutral state will sell to the belligerents articles that are regarded as contraband and that neutral vessels will carry such goods. The goods are of course liable to seizure and the vessels may suffer consequences in proportion to their guilt if they come within the power of the belligerent. Of late years there has been a growing attempt on the part of the neutral states to prevent subjects from engaging in contraband trade. The regulations in regard to this matter are not all equally stringent. The British neutrality proclamation of February 11, 1904, says:

And we hereby further warn and admonish all our loving subjects, and all persons whatsoever entitled to our protection, to observe toward each of the aforesaid powers, their subjects, citizens, and territories, and toward all belligerents whatsoever with whom we are at peace, the duties of neutrality; and to respect, in all and each of them, the exercise of belligerent rights.

And we hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our royal proclamation, and of our high displeasure, to do any acts in derogation of their duty as subjects of a neutral power in a war between other powers, or in violation or contravention of the law of nations in that behalf, as more especially by breaking or endeavoring to break any blockade lawfully and actually established by or on behalf of

either of the said powers, or by carrying officers, soldiers, dispatches, arms, ammunition, military stores or materials, or any article or articles considered and deemed to be contraband of war according to the law or modern usages of nations, for the use or service of either of the said powers, that all persons so offending, together with their ships and goods, will rightfully incur and be justly liable to hostile capture and to the penalties denounced by the law of nations in that behalf.

And we do hereby give notice that all our subjects and persons entitled to our protection who may misconduct themselves in the premises will do so at their peril, and of their own wrong; and they will in nowise obtain any protection from us against such capture or such penalties as aforesaid, but will, on the contrary, incur our high displeasure by such misconduct.

The British proclamation of neutrality in 1904 further prohibits the use by the belligerents of any waters subject to the territorial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities for warlike equipment.

Provision is also made that a belligerent vessel may not "take in supplies beyond what may be necessary for her immediate use." A belligerent vessel is not permitted within British waters "to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer named neutral destination." No further supply of coal within British jurisdiction is allowed till after three months without special permission.

The full statement in regard to the supply of coal is contained in Rule 3 of the proclamation, and is as follows:

RULE 3. No ship of war of either belligerent shall hereafter be permitted, while in any such port, roadstead, or waters subject to the territorial jurisdiction of His Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer named neutral destination, and no coal shall again be supplied to any such ship of war in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of His Majesty, without special permission, until after the expiration of three months from the time when

such coal may have been last supplied to her within British waters as aforesaid.

This rule received a new interpretation by the proclamation of the governor of Malta issued on August 12, 1904. This proclamation states that—

Whereas in giving the said order we were guided by the principle that belligerent ships of war are admitted into neutral ports in view of exigencies of life at sea and the hospitality which it is customary to extend to vessels of friendly powers;

And whereas this principle does not extend to enable belligerent ships of war to utilize neutral ports directly for the purpose of hostile operations;

We, therefore, in the name of His Majesty, order and direct that the above-quoted rule No. 3, published by proclamation No. 1 of the 12th February, 1904, inasmuch as it refers to the extent of coal which may be supplied to belligerent ships of war in British ports during the present war, shall not be understood as having any application in case of a belligerent fleet proceeding either to the seat of war or to any position or positions on the line of route with the object of intercepting neutral ships on suspicion of carrying contraband of war, and that such fleet shall not be permitted to make use in any way of any port, roadstead, or waters subject to the jurisdiction of His Majesty for the purpose of coaling, either directly from the shore or from colliers accompanying such fleet, whether vessels of such fleet present themselves to any such port or roadstead or within the said waters at the same time or successively, and second, that the same practice shall be pursued with reference to single belligerent ships of war proceeding for purpose of belligerent operations as above defined; provided that this is not to be applied to the case of vessels putting in on account of actual distress at sea, in which case the provision of rule No. 3 as published by proclamation No. 1 of the 12th February, 1904, shall be applicable.

It will be observed that this proclamation specifically announces the principle "that belligerent ships of war are admitted into neutral ports in view of exigencies of life at sea and the hospitality which it is customary to extend to vessels of friendly powers;" and that "this principle does not extend to enable belligerent ships of war to utilize neutral ports directly for the purpose of hostile operations." It is not the intention to extend hospitality to belligerent vessels proceeding to the seat of war or advancing for the purpose of belligerent operations, whether against other belligerents or against neu-

trals carrying contraband or otherwise involved in the war. In short, the doctrine would seem to involve the privilege of coaling for navigation to a home port, but no such privilege in order to reach the area of warfare or for direct hostile operations. This position taken by Great Britain is an advanced one. As was said in the discussions of this Naval War College in 1905 (Topic IX, p. 158):

> It can not reasonably be expected that a neutral power will permit its own ports to be used as sources of supplies and coal, using which the belligerent vessel or fleet may set forth to seize the same neutral's commerce or interrupt its trade.

Professor Holland raises the question of supply of coal to a belligerent ship and briefly summarizes the British practice as follows:

> May she also replenish her stock of coal? To ask this question may obviously, under modern conditions and under certain circumstances, be equivalent to asking whether belligerent ships may receive in neutral harbors what will enable them to seek out their enemy, and to maneuver while attacking him. It was first raised during the American civil war, in the first year of which the Duke of Newcastle instructed colonial governors that "with respect to the supplying in British jurisdiction of articles *ancipitis usus* (such, for instance, as coal), there is no ground for any interference whatever on the part of colonial authorities." But, by the following year, the question had been more maturely considered, and Lord John Russell directed, on January 31, 1862, that the ships of war of either belligerent should be supplied with "so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination." Identical language was employed by Great Britain in 1870, 1885, and 1898, but in the British instructions of February 10, 1904, the last phrase was strengthened so as to run: "Or to some nearer *named neutral* destination." The Egyptian proclamation of February 12, 1904, superadds the requirement of a written declaration by the belligerent commander as to the destination of his ship and the quantity of coal remaining on board of her, and Mr. Balfour, on July 11, informed the House of Commons that "directions had been given for requiring an engagement that any belligerent man-of-war, supplied with coal to carry her to the nearest port of her own nation, would in fact proceed to that port direct." Finally, a still stronger step was taken by the Government of this country, necessitated by the hostile advance toward eastern waters of the Russian Pacific squadron. Instructions were issued to all Brit-

ish ports, on August 8, which, reciting that "belligerent ships of war are admitted into neutral ports in view of the exigencies of life at sea, and the hospitality which is customary to extend to vessels of friendly powers; but the principle does not extend to enable belligerent ships of war to utilize neutral ports directly for the purpose of hostile operations," goes on to direct that the rule previously promulgated, "inasmuch as it refers to the extent of coal which may be supplied to belligerent ships of war in British ports during the present war, shall not be understood as having any application to the case of a belligerent fleet proceeding either to the seat of war, or to any position or positions on the line of route, with the object of intercepting neutral ships on suspicion of carrying contraband of war, and that such fleets shall not be permitted to make use, in any way, of any port, roadstead, or waters, subject to the jurisdiction of His Majesty, for the purpose of coaling either directly from the shore or from colliers accompanying such fleet, whether vessels of such fleet present themselves to such port or roadstead, or within the said waters, at the same time or successively; and that the same practice shall be pursued with reference to single belligerent ships of war proceeding for the purpose of belligerent operations, as above defined, provided that this is not to be applied to the case of vessels putting in on account of actual distress at sea. (*See* Parliamentary Paper, Russia, No. 1 (1905), p. 15, and Malta Government Gazette of August 12, 1904. 83 Fortnightly Review, 1905, p. 795.)

Professor Lawrence says:

Lord Lansdowne voiced the usual British doctrine with admirable clearness, when he wrote in February last to a Cardiff firm: "Coal is an article *ancipitis usus* not *per se* contraband of war; but, if destined for warlike as opposed to industrial use, it may become contraband." Can we hold this position, and yet press for the placing of coal on the same footing as ammunition, so far as belligerent men-of-war visiting our territoral waters are concerned? No doubt we should be told that if such ships are no longer to be allowed to buy coal in our ports, we can hardly claim for our merchantmen the right to carry it to their ports unmolested, as long as they are not ports of naval equipment. And yet this argument does not seem conclusive. An article of commerce may be so essential for hostile purposes that no warship ought to be supplied with it in neutral water, and yet so essential for the ordinary purposes of civil life that it ought not to be prevented from reaching the peaceful inhabitants of belligerent countries. The two propositions are not consistent. If both are upheld in reference to coal, we can work for the abolition of the present liberty to supply it to combatant vessels when visiting neutral ports and harbors, and at the same

time maintain that when it is sent abroad in the way of ordinary trade, belligerents must treat it as conditionally and not absolutely contraband. But at present, as we have seen (*see* pp. 129–132), there can be no question of complete prohibition. All we can hope to gain is a rule which will deny coal in future to war vessels when they have broken the conditions on which neutrals allowed them to take a supply. Such an advance in strictness would in no way conflict with our existing doctrine that coal is properly placed among goods conditionally contraband. (War and Neutrality in the Far East, 2d ed., p. 160.)

Policy and practice of France.—The French policy as a neutral has been in general to place little restriction upon the entrance or sojourn of belligerent vessels within its ports. It has been maintained by some French writers that it is entirely proper for a belligerent vessel pursued by its enemy to seek refuge in a neutral port.

If the enemy wishes to reduce them to a state of impotence, it is for him to take the necessary measures to make it dangerous for them to leave. (Dupuis, 181 North American Review, p. 182.)

The doctrine that belligerent vessels may stay in a neutral port in order to obtain "fresh means of navigation," but not to make "any increase of fighting strength," is one which easily leads to abuse. It is exceedingly difficult to distinguish between the military effects of "fresh means of navigation," as coal, and a definite "increase in fighting strength." One might be of as great advantage as the other in actual war.

Even the supplementary observations issued by the French minister of marine in February, 1904, contain such provisions as follows:

En aucun cas, un belligérant ne peut faire usage d'un port français ou appartenant à un État protégé dans un but de guerre, ou pour s'y approvisionner d'armes ou de munitions de guerre, ou pour y exécuter, sous prétexte de réparations, des travaux ayant pour but d'augmenter sa puissance militaire:

Il ne peut être fourni à un belligérant que les vivres, denrées, approvisionnements et moyens de réparations nécessaires à la subsistance de son équipage à la sécurité de sa navigation.

These clauses and others define more clearly than heretofore the position of France.

The French regulations in regard to neutrality of February 13, 1904, were identical with those issued on April

27, 1898, during the Spanish-American war, and can not be said to have been issued with the intention of giving to Russia any especially favorable treatment. The regulations are, however, much less stringent and explicit than those issued by the United States and Great Britain. The French declaration is as follows:

The Government of the Republic declares and notifies whomsoever it may concern that it has decided to observe a strict neutrality in the war which has just broken out between Spain and the United States.

It considers it to be its duty to remind Frenchmen residing in France, in the colonies and protectorates, and abroad that they must refrain from all acts which, committed in violation of French or international law, could be considered as hostile to one of the parties or as contrary to a scrupulous neutrality. They are particularly forbidden to enroll themselves or to take service either in the army on land or on board the ships of war of one or the other of the belligerents, or to contribute to the equipment or armament of a ship of war.

The Government decides, in addition, that no ship of war of either belligerent will be permitted to enter and to remain with her prizes in the harbors and anchorages of France, its colonies and protectorates, for more than twenty-four hours, except in the case of forced delay or justifiable necessity.

No sale of objects gained from prizes shall take place in the said harbors and anchorages.

Any person disobeying the above restrictions can have no claim to the protection of the Government or its agents against the acts or measures which the belligerents might exercise or decree in accordance with the rules of international law, and such persons will be prosecuted, should there be cause, according to the laws of the Republic. (Foreign Relations, U. S., 1898, p. 862.)

It will be observed that no reference is made to the taking of coal in French ports nor to the length of sojourn of a belligerent vessel in a French port except when accompanied by prize, when the stay is limited to twenty-four hours. The general custom is to limit the stay of a belligerent vessel to twenty-four hours and to prohibit absolutely the entrance of a vessel with prize.

Professor Lawrence, comparing the French rules with others, and speaking of the British position, says:

But, taken at their best, French rules require strengthening; and the question for us to consider is whether a further advance

on our part would be more likely to bring our neighbor into line with us, or confirm her in her present position. No doubt our interests would be served by complete prohibition, if it could be made general; and for this reason other states may decline to follow any lead we may give. As we are better off for coaling stations than any other power, and have greater facilities for keeping our fleets supplied by colliers, we could not fail to benefit by a change which would make men-of-war dependent upon coal obtained in their own ports or from their own supply ships. On the other hand, we have more to lose than most states by the present system. Our sea-borne trade is so enormous and so essential to our welfare that an enemy could do vast damage by means of two or three swift and well-handled commerce destroyers, which might for a time obtain coal in neutral ports, though we had succeeded in closing all their own against them. Our neighbors are well aware of this; and they know, in addition, that the change, if made, would either greatly restrict their operations at sea, or lay upon them the necessity of acquiring distant coaling stations. (War and Neutrality in the Far East, 2d ed., p. 130.)

In *Le Temps*, Paris, of May 10 and 11, 1905, there are quite full statements of the positions taken by Japan and France in regard to the hospitality extended to the Russian fleet under Admiral Rojestvensky in French ports, the Japanese maintaining that the assistance had been of such character as to violate neutral obligations. While not questioning the good faith of France, the Japanese maintain that the execution of the orders of the Government has not been effective. From this fact the journey of the Russian fleet has been greatly facilitated and this is a reason for complaint, as it was regarded as "une aide dans un but de guerre."

The Japanese note mentions the length of sojourn and furnishing of coal and provisions at Dakar, at Nossi-Bé, and in Indo-Chinese waters. The actual conclusions of Japan were:

1. Que sans incriminer la bonne foi du gouvernement français il estime que ses ordres ont été exécutés de façon insuffisante;

2. Que s'il a été fait droit à ses observations *après*, il est fâcheux qu'une surveillance plus active n'ait pas permis d'en tenir compte *avant* et de prévenir des actes qu'il tient pour des violations de la neutralité.

The French reply to the Japanese complaint maintains that there is no code of international law; that the procla-

mation issued by France in the Spanish-American war in 1898 was the same as that issued in 1905; that the coaling had been done outside territorial waters; that the sojourn in the neighborhood of Nossi-Bé had not involved any violation of neutrality; that Indo-Chinese coasts have not served as a base of operations; that Japan had acted in the Philippines and Netherland Indies in a manner similar to that of Russia in Indo-Chinese waters; that the protest of Japan against France would be equally valid against Great Britain and the powers, and that in England Lord Lansdowne and Mr. Balfour had expressed approval of the attitude taken by France.

A recent French view is as follows:

Il y a là, croyons-nous, une exagération critiquable au point de vue du Droit international et dangereuse au point de vue pratique. Depuis que la navigation à vapeur s'est substituée à la navigation à voiles, le charbon est devenu un agent nécessaire à la marche des navires; le fournir aux belligérants, ce n'est donc pas leur donner *directement* le moyen de combattre, mais celui de naviguer, et on ne comprend pas plus qu'on le leur refuse, qu'on ne leur refusait autrefois la toile dont ils avaient besoin pour réparer leur voilure. Sinon, la logique commanderait de défendre à un navire belligérant de se ravitailler en vivres, de ne pas réparer ses avaries de machine dans un port neutre, car cela aussi lui permet de continuer sa navigation tout comme une fourniture de charbon. L'État neutre ne peut faire lui-même cette fourniture, parce qu'il violerait sa neutralité en mettant à la disposition des belligérants les ressources de ses dépôts de charbon qui ne sont pas destinés à la vente, mais à son propre service militaire, et qu'il les détournerait ainsi de leur affectation normale pour en faire profiter des belligérants. Mais, nous l'avons vu, l'État n'a pas à empêcher les actes de commerce faits avec les belligérants par les particuliers: ceux-ci vendent leur charbon à un navire belligérant comme ils le vendraient à tout bâtiment national ou étranger. (Despagnet, Cours de droit international public, 3d ed., p. 812.)

General drift toward restriction.—The policy of restriction in furnishing coal and other supplies to a belligerent war vessel in a neutral port has been in the direction of limiting such supplies to those necessary for the immediate needs of navigation. While restrictions do not in general begin to appear until the period of the American civil war, since that time the policy has rapidly

spread. By the end of the nineteenth century in the Spanish-American war, the policy of restriction had become common. In the Russo-Japanese war it was very general. France was a marked instance of the lack of restriction on the supply of coal, though several other states made no restrictions.

The unrestricted supply of coal within a neutral port may lead to serious complications and may be greatly to the disadvantage of the neutral permitting the act. The belligerent thus supplied may use the coal in seeking out and making prize of vessels of the neutral which has permitted the supply to be taken in its ports. The belligerent may agree not to capture vessels belonging to the neutral which allows the coaling, but if it preys on the commerce of another neutral the case may be equally disadvantageous. There may be complications between the two neutrals in consequence.

The United States in June, 1905, took action upon the entrance of the Russian Admiral Enquist with his vessels into the port of Manila. Secretary Taft on June 5, 1905, sent instructions to Governor Wright at Manila as follows:

> Advise Russian admiral that as his ships are suffering from damages due to battle, and our policy is to restrict all operations of belligerents in neutral ports, the President can not consent to any repairs unless the ships are interned at Manila until the close of hostilities. You are directed after notifying the Russian admiral in this conclusion, to turn over the execution of this order to Admiral Train, who has been advised accordingly, by the Secretary of the Navy.

On the following day the Government gave out the account of the matter.

> The Secretary of War is in receipt of a cablegram from Governor Wright announcing that Secretary Taft's instructions of yesterday had been formally transmitted to the Russian admiral, and at the same time inquiry was made whether he would be required to put to sea within twenty-four hours after taking on coal and provisions sufficient to take them to the nearest port. That up to this time only enough coal and sufficient food supplies for use in harbor to last from day to day had been given, as they arrived in Manila with practically no coal or provisions. Governor Wright submitted the question as to whether they were

entitled to take on coal and provisions to carry them to the nearest port. Governor Wright was advised that the President directed that the twenty-four hours limit must be strictly enforced; that necessary supplies and coal must be taken on within that time, these instructions being consistent with those of June 5, stating that as the Russian admiral's ships were suffering from damages due to battle the American policy was to restrict all operations of belligerents at neutral ports—in other words, that time should not be given for repairs of damages suffered in battle.

De Lapradelle entitles an article in 1904 "La nouvelle thèse du refus de charbon aux belligérants dans les eaux neutres."

The proposition to limit the supply to the amount necessary to take the ship to the nearest port of her home country, which has been a form often used and was that approved by the Institute of International Law in 1898, leaves much to be desired. The nearest port may not be in the direction in which the vessel may be voyaging, or if it is it may not be a port suitable for the entrance of such a vessel. The gradual change in recent years has shown that this formula is not sufficient. Such words as the following have been added in certain proclamations: "Or to some nearer neutral destination," "or to some nearer named neutral destination," or that coal shall not be supplied to "a belligerent fleet proceeding either to the seat of war or to any position or positions on the line of route with the object of intercepting neutral ships on suspicion of carrying contraband of war."

In most declarations there has been a provision against allowing a neutral port to become a base for equipping a belligerent's vessel with coal, oil, or other supplies. By "base," as thus used, is meant a place to which the vessel frequently returns. The idea of "frequent," as thus used, is generally covered by the prohibition against taking a new supply of coal from the same neutral port till after the expiration of a period of three months. Some states, however, allow such supply within three months provided permission is obtained from the proper authority.

It would seem to be evident that while the supplying of coal to a belligerent is not prohibited by international law though it has been prohibited in many proclamations, yet

the supplying of coal at such frequent intervals as would make the neutral port a base is generally regarded as prohibited by international law, as is practically admitted in the reply of France to Japan in 1905.

It seems to be the general opinion that the supply of fuel, etc., to belligerents should be somewhat restricted in neutral ports.

There are differences of opinion as to the extent of necessary restrictions. Doubtless there would be need of special restriction in special cases. Some degree of freedom should remain to the neutral in making provisions for special conditions. It would seem reasonable that the neutral should not afford a greater supply of coal or oil even for lubricating purposes than an amount sufficient to carry the vessel to the home port. The purpose is to guard against the furnishing of supplies for hostile uses and at the same time not to intern a vessel of a belligerent which may enter a neutral port. It would probably be desirable to restrict the supply of oil for purposes of fuel which would be included under the general head of fuel and for lubricating purposes which makes necessary specific mention of oil.

Considering opinions, precedents, practice and the aims of a regulation, the following seems a reasonable conclusion:

Conclusion.—The supply of fuel or oil within a neutral port to vessels in belligerent service in no case shall exceed what is necessary to make the total amount on board sufficient to reach the nearest unblockaded port of the belligerent vessel's own state or some nearer named destination.

The supply may be subject to such other regulation as the neutral may deem expedient.

Topic V.

What regulations should be made in regard to mail and passenger vessels in time of war?

CONCLUSION.

(*a*) Neutral mail or passenger vessels, of regular lines established before and not in contemplation of the outbreak of hostilities, bound upon regular voyages and furnishing satisfactory government certification that they are mail or passenger vessels, and do not carry contraband, are exempt from interference except on ample grounds of suspicion of action not permitted to a neutral.

(*b*) Mail or passenger vessels of belligerents, of similar lines, upon regular voyages, plying to neutral ports, should be exempt from interference under such restrictions as will prevent their use for war purposes.

(*c*) Mail or passenger vessels, similarly plying between belligerent ports, may, under such restrictions as the belligerents may agree upon, be exempt from interference.

DISCUSSION AND NOTES.

Classes of mail and passenger vessels.—The mail and passenger vessels plying to and from a given belligerent port at the outbreak of war may be—

(1) Vessels of the belligerent state having jurisdiction over the port.

(2) Vessels of the opposing belligerent.

(3) Neutral vessels.

Vessels of allies would fall under those of the state to which they were allied.

(1) Over vessels of the first class, the state having jurisdiction over the port would have full authority within the limits of international and other agreements.

(2) To vessels of the opposing belligerent under present practice no special favor need be shown.

In the case of the *Panama*, in 1900—

It was argued in behalf of the claimant that, independently of her being a merchant vessel, she was exempt from capture by

reason of her being a mail steamship and actually carrying mail of the United States.

There are instances in modern times, in which two nations, by convention between themselves, have made special agreements concerning mail ships. But international agreements for the immunity of the mail ships of the contracting parties in case of war between them have never, we believe, gone further than to provide, as in the postal convention between the United States and Great Britain in 1848, in that between Great Britain and France in 1833, and in other similar conventions, that the mail packets of the two nations shall continue their navigation, without impediment or molestation, until a notification from one of the governments to the other that the service is to be discontinued; in which case they shall be permitted to return freely, and under special protection, to their respective ports. And the writers on international law concur in affirming that no provision for the immunity of mail ships from capture has as yet been adopted by such a general consent of civilized nations as to constitute a rule of international law. (9 Stat., 969; Wheaton (8th ed.), pp. 659–661, Dana's note; Calvo (5th ed.), secs. 2378, 2809; De Boeck, secs. 207, 208.) De Boeck, in section 208, after observing that, in the case of mail packets between belligerent countries, it seems difficult to go further than in the convention of 1833, above mentioned, proceeds to discuss the case of mail packets between a belligerent and a neutral country, as follows: "It goes without saying that each belligerent may stop the departure of its own mail packets. But can either intercept enemy mail packets? There can be no question of intercepting neutral packets, because communications between neutrals and belligerents are lawful, in principle, saving the restrictions relating to blockade, to contraband of war, and the like; the rights of search furnishes belligerents with a sufficient means of control. But there is no doubt that it is possible, according to existing practice, to intercept, and seize the enemy's mail packets."

The provision of the sixth clause of the President's proclamation of April 26, 1898, relating to interference with the voyages of mail steamships, appears by the context to apply to neutral vessels only, and not to restrict in any degree the authority of the United States, or of their naval officers, to search and seize vessels carrying the mails between the United States and the enemy's country. Nor can the authority to do so, in time of war, be affected by the facts that before the war a collector of customs had granted a clearance, and a postmaster had put mails on board, for a port which was not then, but has since become, enemy's country. Moreover, at the time of the capture of the *Panama*, this proclamation had not been issued. Without an express order of the Government, a merchant vessel is not privileged from search or seizue by the fact that it has a government mail on board. (*The Peterhoff*, 5 Wall., 28, 61.)

The mere fact, therefore, that the *Panama* was a mail steamship, or that she carried mail of the United States on this voyage, does not afford any ground for exempting her from capture. (176 U. S. Supreme Court Reports, 535.)

The position of the court in the case of the *Panama* seems to be correct. There is at present no way by which an adequate guaranty can be secured that vessels of one belligerent will not in some manner act to the injury of the other when they are allowed freedom in transit.

(3) The main questions arise in regard to the vessels of neutrals plying to belligerent ports. Should mail vessels of a neutral be allowed freedom in such commerce?

Treatment of mail vessels.—The British regulations in regard to the carriage of dispatches according to the Manual of the Naval Prize Law provide—

CARRYING ENEMY'S DISPATCHES.

96. A commander should detain any neutral vessel which has on board enemy's dispatches.

97. By the term "enemy's dispatches" are meant any official communications, important or unimportant, between officers, whether military or civil, in the service of the enemy on the public affairs of their government.

98. But to this rule there is one exception, namely, official communications between enemy's home government and the enemy's ambassador or consul resident in a neutral state. Such communications are permissible on the presumption that they concern the affairs of the neutral state, and therefore are of a pacific character.

99. Official communications between the enemy and neutral foreign governments are under no circumstances ground for detention.

EXCUSES TO BE DISREGARDED.

100. It will be no excuse for carrying dispatches that the master is ignorant of their character.

101. It will be no excuse that he was compelled to carry the dispatches by duress of the enemy.

102. The mail bags carried by mail steamers will not, in the absence of special instructions, be exempt from search for enemy dispatches.

LIABILITY OF VESSEL—WHEN IT BEGINS, WHEN IT ENDS.

103. A vessel which carries enemy's dispatches becomes liable to detention from the moment of quitting port with the dispatches on board, and continues to be so liable until she has

deposited them. After depositing them the vessel ceases to be liable.

ENEMY'S DISPATCHES NOT TO BE REMOVED.

104. The commander will not be justified in taking out of a vessel any enemy's dispatches he may have found on board, and then allowing the vessel to proceed; his duty is to detain the vessel and send her in for adjudication, together with the dispatches on board.

PENALTY.

105. The penalty for carrying enemy's dispatches is the confiscation of the vessel and such part of the cargo as belongs to her owner.

Pillet says of these regulations:

Le Manuel des prises reproduit toutes les riguers des anciennes décisions de cours de prises britanniques; certaines de ces rigueurs ne semblent plus de mise aujourd'hui. Il s'est opéré, dans les relations maritimes, des changements considérables dont il y aurait lieu de tenir compte. C'est à quoi s'applique la doctrine. (La guerre maritime et la doctrine anglaise, sec. 232.)

By Article XX of the postal convention between the United States and Great Britain in 1848 mail packets were to "continue their navigation without impediment or molestation until six weeks after a notification shall have been made, on the part of either of the two Governments, and delivered to the other, that the service is to be discontinued; in which case they shall be permitted to return freely, and under special protection, to their respective countries."

The United States proclamation of April 26, 1898, states:

6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

The Spanish instructions for the exercise of the right of visit in 1898 state that in consequence of the visit the vessel is captured in the following case:

7. If she carries letters and communications of the enemy, unless she belong to a marine mail service, and these letters or communications are in bags, boxes, or parcels with the public correspondence, so that the captain may be ignorant of their contents.

It may be entirely possible for a vessel to give very valuable assistance by way of furnishing information. Spain in 1898 stated that a vessel was liable to capture—

8. If the vessel is employed in watching the operation of war, either freighted by the other belligerent or paid to perform this service.

9. If the neutral vessel takes part in this employment, or assists in any way in such operations.

The Japanese regulations governing captures at sea in 1904 provided:

ART. XXXIV. In visiting or searching a neutral mail ship, if the mail officer of the neutral country on board the ship swears in a written document that there are no contraband papers in certain mail bags those mail bags shall not be searched. In case of grave suspicion, however, this rule does not apply.

ART. LXVIII. When a mail steamer is captured, mail bags considered to be harmless shall be taken out of the ship without breaking the seal, and steps shall be taken quickly to send them to their destination at the earliest date.

The Russian instructions concerning the stopping, examining, and detaining of vessels state:

16. After having examined the ship's papers, the officer asks the master to present what mail he has, searches for correspondence of the hostile government and, generally speaking, all packages addressed to the enemy's ports.

Cases involving mail steamers were reported during the Russo-Japanese war in 1904–5. The *Osiris*, British steamship, was stopped on May 4, 1904, by a Russian cruiser and delayed about two hours in an investigation to find whether it contained Japanese mails. On July 15 the German steamship *Prinz Heinrich* was stopped by the *Smolensk* of the Russian volunteer navy and the mail bags taken out. These, with the exception of two, were forwarded by the British steamship *Persia*, which was stopped by the *Smolensk* for that purpose.

At the time of the Russian seizures the United States Secretary of State sent the following to the United States representative in Russia:

DEPARTMENT OF STATE,
Washington, October 13, 1904.

SIR: I inclose copies of papers received from the Postmaster General, concerning the confiscation or detention by the Russian

Vladivostok squadron of mail matter from the United States on board the British steamer *Calchas*, seized off the Japan coast about July 26 last.

You will bring this instance of what appears to be a violation of the provisions of the Universal Postal Convention to the attention of the Russian Government, and request of it an investigation and appropriate action.

Any interruption of regular postal communication entails such serious inconvenience to various interests that, apart from the provisions of treaty, a usage has in recent years grown up to exempt neutral mails from search or seizure. In presenting this matter to the Russian Government you will refer to this fact and express the confidence of this Government that, in its treatment of the subject, the Russian Government will recognize the liberal tendency of recent international usage to exempt neutral mails from molestation.

I am, etc., JOHN HAY.

(Foreign Relations, U. S., 1904, p. 772.)

At the present time, with the possibilities of telegraphic communication, it hardly seems reasonable to imagine that important war correspondence of a belligerent will be intrusted to the ordinary course of the mails. Other means are so much more rapid and time is such an important element in warfare that it would seem that only in rare instances would dispatches of importance to the captor be intrusted to the mails. Dispatches thus sent would be liable to delay, loss, and other accidents. It may be that, like some other regulations, they may come so late that the necessity for their existence may have disappeared. Much of the important business of the world in time of peace is now carried on by means of the telegraph. A much greater proportion is intrusted to the telegraph in time of war.

The diplomatic and ordinary consular dispatches and correspondence between a belligerent and a neutral are not supposed to relate to hostilities, but to the relations between the belligerent and neutral only. The neutral has, therefore, rights in this correspondence, which rights must be fully respected. Such dispatches and correspondence are, therefore, generally exempt from all interference.

Ordinary dispatches and correspondence from a belligerent state may be carried by the regular means of transport without offense.

Kleen says in regard to mail vessels that there should be some distinction in granting immunity:

L'immunité doit être inconditionnelle sur les lignes purement internationales, c'est-à-dire celles qui s'étendent entre des États différents, puisque là les paquebots peuvent être censés servir sans distinction des nations. Il en découlerait l'exemption de saisie en faveur des paquebots allant entre les possessions neutres, et entre elles et les possessions des belligérants. N'importe que ces paquebots soient publics ou privés ou ressortissent à des États neutres ou belligérants, s'ils ne font aucun commerce, ils ne peuvent être saisis sans preuve préalable d'un abus de l'immunité. Au contraire, les paquebots allant entre les possessions d'un belligérant, soit dans les limites de son État, ou entre lui et ses colonies—lignes qui ne peuvent être qualifiées d'internationales—ne sauraient être réputés servir sans distinction des nations; il est juste que la partie adverse dans la guerre les considère comme nationaux, donc comme ennemis par rapport à elle, susceptibles d'une application du droit de saisie tout comme d'autres navires ennemis, s'ils naviguent sous pavillon ennemi. Seulement, il est aussi équitable que le belligérant qui, sur ces fondements et dans ces cas, veut refuser l'immunité à des paquebots faisant un service régulier sur une ligne exploitée déjà avant la guerre, le fasse savoir officiellement avant d'entreprendre aucune saisie, car les intérêts lésés par les saisies peuvent relever de nations quelconques. (2 La neutralité, p. 506.)

Commander von Uslar of the German navy suggests in regard to mail steamers, that—

An agreement may perhaps be arrived at on the lines that (*a*) neutral mail steamers are to be stopped and seized only in the neighborhood of the actual seat of war, and only when strong suspicion rests on them; (*b*) outside the actual seat of war the mails, including those of the belligerents, not to be touched. This exceptional treatment of the correspondence of the belligerents, which is in the interest of the neutrals, can have no essential disadvantage from a military point of view, as important intelligence will be transmitted by telegraph. (181 North American Review, p. 186.)

De Boeck gives the following conclusions in regard to the treatment of mail vessels:

208. Au point de vue de la protection à accorder aux paquebots-poste ennemis, il nous paraît nécessaire de distinguer trois cas: *Premier cas. Le paquebot-poste fait communiquer les deux pays ennemis.* Dans ce cas, il semble difficile d'aller plus loin que l'article 13 de la convention du 14 juin 1833, qui déclare les paquebots faisant le service postal entre Douvres et Calais exempts

d'embargo, d'arrêt de prince, de toute réquisition et de toute molestation, jusqu'à ce que l'un des deux belligérants notifie à l'autre son intention de faire cesser le service, et qui, dans ce cas, assure le retour des paquebots dans leurs ports respectifs. *Deuxiéme cas. Le paquebot-poste fait le service du transport des dépêches entre un pays ennemi et un pays neutre.* Il va de soi que chaque belligérant pourra empêcher le départ de ses propres paquebots. Mais chacun d'eux pourra-t-il intercepter les paquebots-poste ennemis? Il ne pourra être question d'intercepter les paquebots neutres, puisque les communications entre neutres et belligérants sont licites, en principe, sauf les restrictions relatives au blocus, à la contrebande de guerre et à ses *analogues:* le droit de visite fournit aux belligérants un moyen de contrôle suffisant. Mais nul doute qu'il soit possible, d'après la pratique actuelle, d'intercepter et de saisir les paquebots ennemis. Il nous semble qu'il serait à la fois nécessaire et sans inconvénients sérieux de les *neutraliser*, c'est-à-dire de les mettre sur la même ligne que les paquebots neutres: pour les uns comme pour les autres les intérêts légitimes seront suffisamment sauvegardés par l'exercice du droit de visite. *Troisième cas. Les paquebots transportent les dépêches entre deux parties du territoire du même belligérant*, par exemple, entre l'Angleterre et les Indes, la France et l'Algérie. Ici, il va encore de soi qui ce belligérant peut, à son gré, faire cesser ce service. Et l'autre belligérant? Il y aura souvent un grand intérêt, et nous ne croyons pas qu'il puisse s'engager à respecter ce service. Nous concluons donc qu'il serait désirable de voir intervenir des conventions qui assurent l'inviolabilité des paquebots-poste ennemis faisant le service du transport des dépêches entre le pays de chaque belligérant et un pays neutre aux conditions et sous les réserves admises à l'égard des paquebots neutres. (Propriété privée ennemi, p. 240.)

General conclusions as to mail vessels.—From this discussion it would seem to follow:

1. That mail vessels belonging to a belligerent are liable to seizure by the other belligerent.

2. That such vessels may by special agreement be exempt from capture.

3. That as the interests of neutrals may be involved in such seizure, the mails should, so far as regular, be forwarded without delay.

4. That when such vessels ply between neutral and belligerent states due notice should be given of liability to interruption.

5. Innocent neutral vessels carrying mails should be exempt from seizure.

Passenger traffic and transport service.—There is little question that the regular passenger traffic between belligerents and neutrals should be as free as the necessities of war will permit. There would be little advantage to a belligerent in interfering with such traffic.

Quite different is the transport of troops or military persons by direct agreement or in the service of a belligerent. The act is very different from the carriage of contraband which may be purely a commercial venture. The act may be of far greater service than the transport of war material. The vessel engaging in the transport of troops really enters the service of the enemy and the act becomes military in nature and the vessel, whatever its nationality, is liable to treatment as an enemy vessel. The seizure of the military persons transported would not be an adequate penalty for the vessel concerned, but the vessel itself is liable to confiscation and the persons concerned may be held as prisoners of war.

Speaking of the service of a regular passenger vessel, Hall says:

> When again a neutral in the way of his ordinary business holds himself out as a common carrier, willing to transport everybody who may come to him for a certain sum of money from one specified place to another, he can not be supposed to identify himself specially with belligerent persons in the service of the state who take passage with him. The only questions to be considered are whether there is any usage compelling him to refuse to receive such persons if they are of exceptional importance, and consequently whether he can be visited with a penalty for receiving them knowingly, and whether, finally, if he is himself free from liability, they can be taken by their enemy from on board his vessel. (International Law, 5th ed., p. 674.)

When a vessel is directly used as a transport for enemy persons the condition is unlike that of an ordinary passenger vessel. Wheaton says:

> Of the same nature with the carrying of contraband goods is the transportation of military persons or dispatches in the service of the enemy.
>
> A neutral vessel, which is used as a transport for the enemy's forces, is subject to confiscation, if captured by the opposite belligerent. Nor will the fact of her having been impressed by violence into the enemy's service exempt her. The master can

not be permitted to aver that he was an involuntary agent. Were an act of force exercised by one belligerent power in a neutral ship or person to be considered a justification for an act, contrary to the known duties of the neutral character, there would be an end of any prohibition under the law of nations to carry contraband, or to engage in any other hostile act. If any loss is sustained in such a service, the neutral yielding to such demands must seek redress from the government which has imposed the restraint upon him. As to the number of military persons necessary to subject the vessel to confiscation, it is difficult to define; since fewer persons of high quality and character may be of much more importance than a much greater number of persons of lower condition. To carry a veteran general, under some circumstances, might be a much more noxious act than the conveyance of a whole regiment. The consequences of such assistance are greater, and therefore the belligerent has a stronger right to prevent and punish it; nor is it material, in the judgment of the prize court, whether the master be ignorant of the character of the service on which he is engaged. It is deemed sufficient if there has been an injury arising to the belligerent from the employment in which the vessel is found. If imposition is practiced, it operates as force; and if redress is to be sought against any person, it must be against those who have, by means either of compulsion or deceit, exposed the property to danger; otherwise, such opportunities of conveyance would be constantly used, and it would be almost impossible, in the greater number of cases, to prove the privity of the immediate offender. (Atlay's ed., p. 673.)

In an extended treatment of transport, Kleen says, very properly:

Quelquefois ont été rangés parmi les articles de contrebande de guerre certains objets qui n'y appartiennent pas, bien que leur transport pour le compte ou à destination d'un belligérant puisse être interdit. Non seulement chez des publicistes mais aussi dans des lois et traités, certaines *personnes* et *communications* sont considérées comme une espèce de contrebande, du moment qu'elles ont été apportées à un ennemi ou transportées à cause de lui, de manière à le renforcer ou l'aider dans la guerre, soit matériellement, soit même intellectuellement. C'est ainsi que se rencontrent depuis longtemps sur les listes de contrebande des objets tels que "soldats," "troupes," etc., dernièrement aussi "documents." (I La neutralité, p. 452, sec. 103.)

Later, Kleen says:

En transport des personnes ou des dépêches pour le compte d'un belligérant comme tel, ou entre ses stations, possessions ou autorités en vue de la guerre, le neutre ne se borne pas à lui

apporter purement et simplement un renfort: il se met *à son service.* Et ce service se fait par le transport de ce qui appartenait déjà au belligérant ou à son administration, tandis que le trafic de contrebande lui fournit quelquechose de nouveau.

Assurément, la neutralité n'exige pas l'interruption des relations personnelles et postales avec les belligérants. Il est permis de leur *amener* des personnes hors des enrôlés et des auxiliaires, ainsi que des choses non de contrebande. Il n'est pas nécessaire, non plus, de suspendre un service de communication sur le territoire d'un belligérant ou y aboutissant, qui y avait été organisé avant la guerre ou indépendamment d'elle, régulièrement et sans autre but que le trafic ordinaire, fût-ce même par des neutres. Le fait de transporter des personnes ou des choses relevant d'un belligérant, ne déroge à la neutralité que lorsque cela se fait pour lui en sa *qualité de* belligérant et pour son compte, ou bien entre ses stations ou autorités, de telle sorte que le neutre se met à sa disposition en vue de l'aider à faire passer à leur destination belliqueuse des objets ou des forces qui concernent la guerre. C'est ce qui peut avoir lieu par des transports, dans certaines circonstances, des agents diplomatiques, des militaires, des dépêches ou des approvisionnements d'un belligérant, ainsi que par le pilotage de ses navires de guerre. La neutralité serait rompue par de tels actes, indépendamment de tout usage ou convention, et quand même le service serait rendu aux deux parties belligérantes. (I Kleen, La neutralité, p. 456.)

British regulations.—The British Manual of Naval Prize Law makes very full provision in regard to the carriage of persons for the enemy:

ACTING AS A TRANSPORT.

88. A commander should detain any neutral vessel which is being actually used as a transport for the carriage of soldiers or sailors by the enemy.

89. The vessel should be detained, although she may have on board only a small number of enemy officers; or even of civil officials sent out on the public service of the enemy, and at the public expense.

90. The carriage of ambassadors from the enemy to a neutral State, or from a neutral State to the enemy, is not forbidden to a neutral vessel, for the detention of which such carriage is therefore no cause.

EXCUSES TO BE DISREGARDED.

91. It will be no excuse for carrying enemy military persons that the master is ignorant of their character.

92. It will be no excuse that he was compelled to carry such persons by duress of the enemy.

LIABILITY OF VESSEL—WHEN IT BEGINS, WHEN IT ENDS.

93. A vessel which carries enemy military persons becomes liable to detention from the moment of quitting port with the persons on board, and continues to be so liable until she has deposited them. After depositing them the vessel ceases to be liable.

PERSONS NOT TO BE REMOVED.

94. The commander will not be justified in taking out of a vessel any enemy persons he may have found on board, and then allowing the vessel to proceed; his duty is to detain the vessel and send her in for adjudication, together with the persons on board.

PENALTY.

95. The penalty for carrying enemy military persons is the confiscation of the vessel and of such part of the cargo as belongs to her owner.

United States regulations.—It was provided in the United States instructions to blockading vessels and cruisers of June 20, 1898:

16. A neutral vessel in the service of the enemy, in the transportation of troops or military persons, is liable to seizure.

Japanese regulations.—In the Japanese regulations of 1904 it is stated that—

ART. XXXVIII. Vessels carrying contraband persons, papers, or goods, but which do not know the outbreak of war, shall be exempt from capture.

The fact that the master of a vessel does not know the persons, papers, or goods on board to be contraband of war, or that he took them on board under compulsion, shall not exempt the vessel from capture.

Penalty for transport service.—The penalty for unneutral service differs from that for the carriage of contraband:

It will be remembered that in the case of ordinary contraband trade the contraband merchandise is confiscated, but the vessel usually suffers no further penalty than loss of time, freight, and expenses. In the case of transport of dispatches or belligerent persons, the dispatches are of course seized, the persons become prisoners of war, and the ship is confiscated. The different treatment of the ship in the two cases corresponds to the different character of the acts of its owner. For simple carriage of contraband the carrier lies under no presumption of enmity towards the belligerent, and his loss of freight, etc., is a sensible deterrent from the forbidden traffic; when he enters the service of

the enemy seizure of the transported objects is not likely to affect his earnings, while at the same time he has so acted as fully to justify the employment towards him of greater severity. (Hall, International Law, 5th ed., p. 678.)

In the transport of persons in the service of a belligerent, the essence of the offense consists in the intent to help him; if, therefore, this intent can in any way be proved, it is not only immaterial whether the service rendered is important or slight, but it is not even necessary that it shall have an immediate local relation to warlike operations. It is possible for a neutral carrier to become affected by responsibility for a transport effected to a neutral port, and it may perhaps be enough to establish liability that the persons so conveyed shall be in no civil employment. (Hall, International Law, 5th ed., p. 677.)

The penalty for illegal transport service can not end with the confiscation of dispatches.

Indépendamment des peines imposées par les législations nationales—peines qui doivent être identiques au possible et s'accorder avec le droit international—les navires coupables de services de transport sont confisqués ainsi que les dépêches et objets illicites, les personnes illégalement transportées et les pilots contrevenants peuvent être faits prisonniers, et les patrons ou armateurs en faute perdent leur prétention au fret et aux frais. (I Kleen, La neutralité, p. 474.)

Dana, in a note to Wheaton's International Law, says:

If a vessel is in the actual service of the enemy as a transport, she is to be condemned. In such case it is immaterial whether the enemy has got her into his service by voluntary contract or by force or fraud. It is also, in such cases, immaterial what is the number of the persons carried, or the quantity or character of the cargo; and, as to dispatches, the court need not speculate upon their immediate military importance. It is also unimportant whether the contract, if there be one, is a regular letting to hire, giving the possession and temporary ownership to the enemy, or a simple contract of affreightment. The truth is, if the vessel is herself under the control and management of the hostile government, so as to make that government the owner pro tempore, the true ground of condemnation should be as enemy's property. (Note 228, p. 643.)

International Law Association discussion.—Mr. Douglas Owen, at the meeting of the International Law Association in 1905, proposed that Great Britain should take measures to protect mail and passenger steamers, saying:

1. In the first place the royal proclamation should, in the case of mail and passenger steamers, be regarded as something more

than a pious wish. It should be given the force of a legal prohibition, with punitive enactments.

2. Owners knowingly carrying contraband goods, and traders shipping contraband goods, by such vessels should be rigorously dealt with; the fraudulent misdescription of contraband goods being treated as a grave offense.

3. Shipowners put to loss or expense through the illegal shipment of contraband, or cargo owners similarly damnified by the illegal carriage of contraband, to have the right to claim compensation from the wrongdoers.

4. Contraband goods illegally shipped or intended to be shipped to be subject to confiscation.

5. The penalties for breach of the (suggested) law to be enforceable notwithstanding the successful delivery of the contraband goods.

6. Persons giving information of breach or intended breach of the law to be rewarded by a proportion of the value of the confiscated goods, or otherwise.

7. Insurances in contravention of the law to be null and void, with penalties upon the underwriters knowingly effecting such insurances.

8. Shipowners under Government subsidy for the carriage of mails or license for the conveyance of passengers to give pecuniary guarantees for observance of the (suggested) special laws against carriage of contraband.

I submit that there would be nothing unreasonable or impracticable in such laws, and that few, if any, British subjects would dare to attempt their breach or evasion. Contraband traders would, instead, make use of ships to which the laws did not apply. The shipment and carriage of contraband by mail and passenger steamers from Great Britain would cease, and with such cessation would disappear any reason for their capture. It may be objected that the British law would not prevent the shipment of disguised contrabands by British liners loading cargo at Continental ports. I admit it; but if the regulations which I have sketched were adopted by all the states; if they were, in fact or effect, made international, the mail and passenger steamers of every nation would be closed to the trade in contraband. The offense would be equally preventable and punishable, whether committed by a foreign merchant against a British ship, or conversely by a British merchant against a foreign ship. It is my firm belief that the effect of an international law on the lines indicated would operate with such success that before long there would be a universal demand for similar restrictions, in protection of neutral traders generally, in the case of recognized liners sailing with the regularity of mail and passenger steamers, but by reason of their slower speed not in the category of such special vessels. (22d Report, p. 62.)

At this meeting of the International Law Association at Christiania in 1905, Mr. Douglas Owen, offered the following resolution which, after amendment, was adopted:

That in the opinion of this conference the time has come for protecting the world's mail and passenger steamers from belligerent seizure, and that with this object international legislation should be adopted to prevent the shipment and carriage of contraband of war by such vessels, and to render the same a punishable offense. (22d Report, p. 73.)

In seconding the resolution, Sir Walter Phillimore said:

I rise to second the proposal of Mr. Douglas Owen, because I agree on the whole with what he has proposed. Two things seem to me to be very obvious. The first thing is that it is quite impossible that all the mail steamers of the world, with their enormous cargoes and enormous interests at stake of private importance and public importance, and their large number of passengers, should be liable, as they are liable, to be visited and to be taken into a port of some belligerent nation, a port which may be 1,000 miles away, on suspicion that they are carrying contraband of war. It seems to me impossible that they should continue. It also seems to me impossible to deprive belligerents of their rights to stop contraband of war being carried by passenger mail steamers with valuable commercial cargoes. If mail steamers are carrying contraband of war, the belligerents have a right to prevent it, and therefore we must try to reconcile the two rights; that is to say, try to secure a belligerent from having contraband of war carried by passenger mail steamers, and try, on the other hand, to secure the neutral passengers on mail steamers from visit and detention and deviation into some port belonging to the captor. One way which Mr. Douglas Owen suggests is that the neutral nation should intervene and give, as it were, its word of honor that its passenger steamers would not convey contraband, and should enforce that by a Government inspection and by making it a criminal offense for such vessels to ship contraband. That is one way of doing it. Another way that has occurred to me is that without any such legislation a large steamship owner might put himself in communication with his own government, and might say: "I am ready to submit to any inspection which you like to make; I am willing to give bonds to pay if I fail, not only at the port of original dispatch, but at all ports at which my ships touch, if you will put your agents on board to inspect. On the other hand, I ask you to communicate with the two belligerents, and to obtain from them a letter or license for me that my ship, fulfilling those conditions, shall not be arrested in the course of the voyage, or, at any rate, not arrested on suspicion that it is not

fulfilling all the conditions, but has taken some goods on board for transit which it ought not to do." There is a third way in which it might be done, even perhaps more direct. The steamship company might put itself, through its manager, in communication direct with the two belligerents, and might say: "Send down to Southampton, or to the docks in London, or to New York, a Japanese agent from Japan and a Russian agent from Russia, or if you like, somebody you can trust—your consul or anybody else—and I will ship under the supervision of any agent you like to appoint, and then I ask each of you in turn not to arrest me on the high seas." All these are various ways of meeting the end to be attained. Perhaps the most official way is that which is suggested by Mr. Douglas Owen. I feel convinced, having thought a good deal on this subject, that the time has come, not for diminishing the effective rights of belligerents, but for preventing the *Prinz Heinrich*, or one of the English mail steamers, or great American liners like the *Paris*, being diverted for 1,000 miles from her course, with all her passengers on board, on suspicion of having contraband of war. For these reasons I second Mr. Douglas Owen's proposal. (Applause.) (Ibid., p. 91.)

Rules of the Institute of International Law.—The Institute of International Law in 1896 adopted the following rules in regard to transport service:

SEC. 6. Il est défendu d'attaquer ou empêcher le transport de diplomates ou courriers diplomatiques: 1° neutres, 2° accrédités auprès de gouvernements neutres; 3° naviguant sous pavillon neutre entre des ports neutres ou entre un port neutre et le port d'un belligérant.

Au contraire, le transport des diplomates d'un ennemi accrédités auprès de son allié est, sauf le trafic régulier et ordinaire, interdit; 1° sur les territoires et eaux des belligérants; 2° entre leurs possessions; 3° entre les belligérants alliés.

SEC. 7. Sont interdits les transports de troupes, militaires ou agents de guerre d'un ennemi; 1° dans les eaux des belligérants; 2° entre leurs autorités, ports, possessions, armées ou flottes; 3° lorsque le transport se fait pour le compte ou par l'ordre ou le mandat d'un ennemi, ou bien pour lui amener soit des agents avec une commission pour les opérations de la guerre, soit des militaires étant déjà à son service ou des troupes auxiliaires ou enrôlées contrairement à la neutralité, entre ports neutres, entre ceux d'un neutre et ceux d'un belligérant, d'un point neutre à l'armée ou la flotte d'un belligérant.

L'interdiction ne s'étend pas au transport de particuliers qui ne sont pas encore au service militaire d'un belligérant, lors même qu'ils auraient l'intention d'y entrer, ou qui font le trajet comme simples voyageurs sans connexité manifeste avec le service militaire.

SEC. 8. Entre deux autorités d'un ennemi, qui se trouvent sur quelque territoire ou navire lui appartenant ou occupé par lui, est interdit, sauf le trafic régulier et ordinaire, le transport de ses dépêches (communications officielles entre autorités officielles).

L'interdiction ne s'étend pas aux transports soit entre ports neutres, soit en provenance ou à destination de quelque territoire ou autorité neutre. (15 Annuaire de l'Institut de Droit international, 1896, p. 231.)

Summary.—In any rules which might be proposed it would seem proper—

1. That a belligerent refraining from interference with a neutral or belligerent mail or passenger vessel which naturally might be of service to its opponent should have a right to demand that a reasonable assurance be given that such vessel should not be put to any war use if permitted to continue its regular traffic.

2. That neutrals should claim that regular mail and passenger service which in no way affects the conduct of hostilities should be free from interference.

3. That neutrals or belligerents to whom exemption from interference is conceded should be willing to take reasonable care in order that the concession be not abused. This can probably be done effectively by certification as to the character and guaranties as to use.

From regulations, opinions, precedents, and theories it would seem that the following rules should be established by international agreement:

Conclusion.—(*a*) Neutral mail or passenger vessels, of regular lines established before and not in contemplation of the outbreak of hostilities, bound upon regular voyages and furnishing satisfactory government certification that they are mail or passenger vessels, and do not carry contraband, are exempt from interference except on ample grounds of suspicion of action not permitted to a neutral.

(*b*) Mail or passenger vessels of belligerents, of similar lines, upon regular voyages, plying to neutral ports should be exempt from interference under such restrictions as will prevent their use for war purposes.

(*c*) Mail or passenger vessels, similarly plying between belligerent ports, may, under such restrictions as the belligerents may agree upon, be exempt from interference.

Topic VI.

What regulations should be made in regard to subsidized, auxiliary, or volunteer vessels in time of war?

CONCLUSION.

1. When a subsidized, auxiliary, or volunteer vessel is used for military purposes it must be in command of a duly commissioned officer in the military service of the government.

2. When subsidized, auxiliary, or volunteer vessels, or vessels adapted for or liable to be incorporated into the military service of a belligerent, are in a neutral port in the character of commercial vessels at the outbreak of hostilities, the neutral may require that they immediately furnish satisfactory evidence whether they will assume a military or retain a commercial character.

3. Subsidized, auxiliary, or volunteer vessels, or vessels adapted for or liable to be incorporated into the military service of a belligerent, on entering a neutral port after the outbreak of hostilities, may be required by the neutral immediately to make known whether their character is military or commercial.

4. Until publicly changed in a home port, such vessels as have made known their character must retain as regards neutrals the character assumed in the neutral port.

5. The exercise of belligerent authority toward a neutral by subsidized, auxiliary, or volunteer vessels is sufficient to establish their military character.

DISCUSSION AND NOTES.

General.—As a general proposition it may be maintained that a state should be allowed to use its resources to protect itself in time of war and to preserve its existence. On land a militia is regarded as a perfectly legitimate aid to the regular army, and in extreme cases the levies *en masse* are recognized as legitimate hostile forces. It is not reasonable to suppose that the resources of the belligerent on the sea will not be summoned to aid in the preservation of state existence. These resources are liable to attack. They will so far as possible be called into

service. Horses, wagons, railroads, cars, telegraphs, etc., are called into service on land; corresponding agencies will be called into service on the sea.

The objection to the continuance of privateering was largely due to the lack of government control over those engaged in the practice. This control is easily exercised over those aiding in military operations on land because a representative of the government is usually at hand to direct the movements.

An equal degree of control may be exercised in the case of auxiliary, volunteer, and subsidized vessels maintained by a government, officered and manned by the paid servants of that government, and operated under its direction. The use of such vessels is a matter of great importance, and there seems to be no reasonable objection to their employment for any and all purposes of naval warfare, provided that the proper degree of government control is maintained.

By the first division of the declaration of Paris, 1856, which, however, is only binding on the states parties thereto, "privateering is and remains abolished." Some writers hold that the use of auxiliary vessels, to cruise against an enemy's commerce, amounts to a practical abrogation of this provision. For example, Funck-Brentano in 1894 maintained that the first article of the declaration of Paris is practically obsolete. Speaking of the Turco-Russian war of 1877 and the Russian volunteer navy he said:

> Depuis, tous les autres États maritimes encouragent leurs grandes sociétés de navigation à construire des paquebots susceptibles d'être transformés en croiseurs en temps de guerre. C'est en fait l'abolition de l'article 1er de la déclaration de Paris, qui lui-même abolissait la course. Les noms seuls sont changés; la guerre maritime privée prendra le nom de guerre maritime publique, les corsaires s'appelleront des croiseurs, les lettres de marque seront remplacées par des patentes de commission et les capitaines corsaires deviendront des capitaines commissionnés. (1 Revue générale de droit international public, p. 328.)

To hold with Funk-Brentano, and those who take more or less the same view, is to lose sight of the essential characteristic of a *privateer;* to wit, a vessel not maintained

by the government but operating for private gain; sanctioned by the government, it is true, but subject to only a limited degree of governmental control.

Recent British discussion.—In April, 1903, a British royal commission on supply of food and raw material in time of war was appointed by King Edward:

> To inquire into the conditions affecting the importation of food and raw material into the United Kingdom of Great Britain and Ireland in time of war, and into the amount of the reserves of such supplies existing in the country at any given period; and to advise whether it is desirable to adopt any measures, in addition to the maintenance of a strong fleet, by which such supplies can be better secured and violent fluctuations avoided. (Report of Commission, Vol. I, p. ix.)

Professor Holland, in the report of this commission (App. XXVIII, Vol. III, p. 265), says:

> Under the term "privateers" are, however, not included commissioned vessels, commanded by naval officers, under such conditions as would apply, e. g., to the Russian "volunteer fleet," or to the specially constructed liners which are subsidized, with a view to war, by Great Britain and other powers.

In question 6717 of the commission, Lord Balfour raises the point of difference between a privateer and a vessel of the volunteer fleet. He says:

> The essence of that distinction is this, is it not, that although a private person may fit out a ship, or a merchant ship may be fitted out as a privateer, they must go to sea under the orders and by the instructions, and on the authority, of the government, whose subjects they are?

Professor Holland replies:

> It must be a little more than that. They must have naval officers on board, and it is not a private venture for private gain as the old privateer used to be. The old privateer had a government commission, but their object was private gain, whereas the modern volunteer fleet and the modern subsidized ships really become part of the navy when war breaks out.

Of privateering, Professor Westlake, in his reply to the royal commission on food supply, says:

> The second point mentioned in your letter of 14th August was "whether the practice of privateering is likely to be revived."
>
> A privateer was a privately owned ship, furnished with a commission of war empowering her to act in all warlike operations,

but usually confining herself to action against commerce, and usually acting not under state command but independently, though subject to state control. The declaration of Paris in abolishing privateering (la course) does not state against what parts of this description it is directed, but the regulations for the Russian volunteer fleet and those for the mail steamers subsidized by France and England testify to an understanding that the employment of privately owned ships in war under state command is not unlawful. The regulations for the Prussian volunteer fleet in 1870 contemplated independent action by privately owned ships against the enemy's ships of war, and Lord Granville declared himself unable to object to the plan. If a privately owned ship acts under state command, it seems impossible to deny to her state the right to order her to attack or visit a merchantman as well as to attack a ship of war. There remains the independent action of a privately owned ship against commerce, and this appears to be what the declaration of Paris intended to abolish. I do not think it at all likely to be revived. (Report, Vol. III, App. XXIX, p. 270.)

In the report—

Sir John Colomb asks Professor Holland if—

the mere fact of giving commissions to the officers of merchant ships excludes them from being treated as privateers if they take part in war?

Profesor Holland replied:

"Their officers must be naval officers, not merely officers with commissions *ad hoc*, I conceive; they must have been antecedently naval officers, or in the naval reserve, or something of that sort."

6821. Q. Then they must have been previously officially connected with the naval service?—A. Yes, I conceive so; that is, before the war. It has never been laid down anywhere, but that I think is the supposition.

6822. Q. It would be a questionable proceeding, at all events, to give commissions to men not naval officers?—A. Yes.

6823. Q. Although they were captains of the mercantile marine?—A. That would not, I think, satisfy opinion at all.

The position of Professor Holland seems to be one which few governments would care to assume. It would seem to imply that some outside authority can properly deny the validity of a commission issued by a state and can determine the amount and character of the prior training or service requisite for the holding of a commission. If, as Professor Holland holds, it is necessary that

the commissioned officers in command of such vessels as may be included in the auxiliary navy be officially connected with the naval service before the war, evidently in a long war it might become impossible to officer such vessels. It also might be questioned whether an officer of the mercantile marine or a commander of a great ocean liner might not be a person more fit in every way to command an auxiliary vessel than a much less experienced man whose training had been in the naval reserve or similar force.

The fact seems to be that what is to be demanded is not some particular qualification or experience in the officer, but absolute responsibility on the part of the government which gives him a commission. In other words, his acts must be acts of his government because his government has given him a commission.

There seems to be, however, no valid objection to the employment in war of vessels of the mercantile marine, provided that they shall have been duly incorporated into the belligerent navy, that their officers hold naval commissions, and that they are under naval orders and discipline. (Report Royal Commission on Supply of Food, 1905, Vol. I, p. 22.)

Prussian plan, 1870.—The following decree formed the basis of extended discussion at the time of the Franco-Prussian war:

Royal Prussian decree of the 24th July, 1870, relative to the constitution of a voluntary naval force—

On your representation I have approved the formation of a voluntary naval force under the following form:

1. To issue a summons to all German seamen and shipowners to place themselves, and their forces and ships suitable thereto, at the service of the Fatherland, and under the following conditions:

(*a*) The vessels to be placed at the disposition of the service will be examined and taxed by a commission composed of two naval officers and one naval contractor as to their capabilities for the intended purpose. In this case the owner receives one-tenth of the price taxed as deposit, whereupon he has to hire the necessary volunteer crews.

(*b*) Officers and crews enrolled in this way enter into the federal navy for the continuance of the war, and wear its uniform and badge of rank, acknowledge its competency, and take oath to the articles of war. The officers receive a patent of their rank, and the assurance that, in case of extraordinary service

rendered, they can, at their request, be permanently established in the navy. Officers and men who are rendered, by this service, unfit to acquire a livelihood, without any fault on their side, receive a pension calculated at the standard of the royal federal navy.

2. The hired ships sail under the federal flag.

3. These will be armed by the federal royal navy, and fitted out for the service allotted to them.

4. The ships destroyed in the service of their country will be paid for to their owners at the price taxed. If at the end of the war they can be restored to the owners uninjured, the sum paid as deposit is reckoned as hire.

5. A premium will be paid to such ships as capture or destroy ships of the enemy, according to the following standard: For an iron-plated frigate 50,000 thalers, an iron-plated corvette or ram 30,000 thalers, an iron-plated battery 20,000 thalers, a large screw-vessel 15,000 thalers, a screw-vessel 10,000 thalers. These premiums will be paid the owners of the ships, to whom will be confided the distribution in proper proportions amongst the crew.

6. The authorities for all communications on the subject are those of—

(*a*) The docks of Wilhelmshaven, Kiel, and Danzig;

(*b*) The Marine depots at Geestemunde and Stralsund, and

(*c*) The sea captain Weickhmann, at Hamburgh.

Further details must be hereafter elaborated.

WILHELM.

Countersigned:

VON BISMARCK.

VON ROON.

BERLIN, *July 24, 1870.*

The French ambassador requested the opinion of the British Government on "la création de cette prétendue marine auxiliaire," maintaining that it was contrary to the declaration of Paris. The following was the British reply:

FOREIGN OFFICE, *August 24, 1870.*

M. L'AMBASSADEUR: Your excellency, in your letter of the 3d of August, requested to be made acquainted with the opinion that the law officers of the Crown might give on a notification issued by the Prussian Government on the 24th July last, for engaging ships privately armed in the war service of the North German Confederation.

At that time I was not in possession of a copy of that notification, and I informed you that I would call upon Her Majesty's ambassador at Berlin to procure one.

In the meantime, however, and indeed on the same day, namely, the 20th of this month, that your excellency left at this office a

note verbale on the same subject, one of the members of the diplomatic body at this court gave me a copy of the notification, and I thereupon referred the matter without delay to the law officers of the Crown.

I have now received their opinion, of which, in compliance with your request, I have the honor to state to you the substance.

They advise me that there are, in their opinion, substantial distinctions between the proposed naval volunteer force sanctioned by the Prussian Government and the system of privateering, which, under the designation of "la course," the declaration of Paris was intended to suppress.

The law officers say that, as far as they can judge, the vessels referred to in the notification of the 24th July will be for all intents and purposes in the service of the Prussian Government, and the crews will be under the same discipline as the crews on board vessels belonging permanently to the federal navy.

This being the case now, and as long as it continues to be so, the law officers consider that Her Majesty's Government can not object to the decree of the Prussian Government as infringing the declaration of Paris.

Her Majesty's Government will, however, with reference to the Prussian notification, call the attention of the Prussian Government to the declaration of Paris, and will express their hope and belief that Prussia will take care to prevent by stringent instructions any breach of that declaration. I am, etc.

GRANVILLE.

(61 British State Papers, pp. 692, 694.)

Hall's opinion of the Prussian plan for a volunteer navy in 1870 shows that the safeguards of that plan were not sufficient. Reviewing the matter, he says:

A measure taken by Prussia during the Franco-German war of 1870 opens a rather delicate question as to the scope of the engagement not to employ privateers by which the signataries of the declaration of Paris are bound. In August of that year the creation of a volunteer navy was ordered by decree. The owners of vessels were invited to fit them out for attack on French ships of war, and large premiums for the destruction of any of the latter were offered. The crews of vessels belonging to the volunteer navy were to be under naval discipline, but they were to be furnished by the owners of the ships; the officers were to be merchant seamen, wearing the same uniform as naval officers, and provided with temporary commissions, but not forming part of, or attached to, the navy in any way, though capable of receiving a commission in it as a reward for exceptional services; the vessels were to sail under the flag of the North German navy. The French Government protested against the employment of private vessels in this manner as an evasion of the declaration of Paris,

and addressed a dispatch on the subject to the Government of England. The matter was laid before the law officers of the Crown, and they reported that there were substantial differences between a volunteer navy as proposed by the Prussian Government and the privateers which it was the object of the declaration to suppress. Lord Granville in consequence declared himself unable to make any objection to the intended measure on the ground of its being a violation of the engagement into which Prussia had entered. Nevertheless it hardly seems to be clear that the differences, even though substantial, between privateers and a volunteer navy organized in the above manner would necessarily be always of a kind to prevent the two from being identical in all important respects. In both the armament is fitted out by persons whose motive is wish for gain; in both the crews and officers are employed by them, and work, therefore, primarily rather in their interests than in those of the nation. The difference that in the particular case of the Prussian volunteer navy attacks upon men-of-war were alone contemplated was accidental and would have been temporary. At the beginning of the war Prussia announced her intention not to capture private property at sea in the hope of forcing France to spare the commerce which she was herself unable to protect. If the war had been continued for any length of time after January, 1871, when this announcement was withdrawn, and if a volunteer navy had in fact been formed, it would of course have been authorized to capture private property; and there is no reason to suppose that any state acting upon the custom of seizing private property would make a distinction between public and private vessels in the powers given to its volunteer navy. The sole real difference between privateers and a volunteer navy is, then, that the latter is under naval discipline, and it is not evident why privateers should not also be subjected to it. It can not be supposed that the declaration of Paris was merely intended to put down the use of privateers governed by the precise regulations customary up to that time. Privateering was abandoned because it was thought that no armaments maintained at private cost, with the object of private gain, and often necessarily for a long time together beyond the reach of the regular naval forces of the state, could be kept under proper control. Whether this belief is well founded or not is another matter. If the organization intended to be given to the Prussian volunteer navy did not possess sufficient safeguards, some analogous organization no doubt can be procured which would provide them. If so, there could be no objection on moral grounds to its use; but unless a volunteer navy were brought into closer connection with the state than seems to have been the case in the Prussian project it would be difficult to show as a mere question of theory that its establishment did not constitute an evasion of the declaration of Paris. (International Law, 5th ed., p. 527.)

Verraes, after explaining some of the earlier discussions and considering particularly the Prussian proposition of 1870, offers the following opinion:

Le caractère légal d'une marine volontaire dépend comme celle d'une troupe armée, du lien plus ou moins étroit qui l'unit au gouvernement et des garanties qu'elle présente pour l'observation des lois de la guerre, sous l'autorité d'un commandant à même de se rendre compte de sa responsabilité et de remplir ses devoirs. Il faut reconnaître que les navires de la "freiwillige Seewehr" répondent à la définition généralement donnée du navire de guerre; celui qui appartient à flotte est soumis à un commandant militaire et possède un équipage organisé militairement. Les propriétaires des navires fournissent ceux-ci; mais les bâtiments une fois entrés au service, ils n'ont plus le droit d'en disposer: ils reçoivent seulement comme loyer la prime convenue préalablement et dédommagement en cas de perte des navires. En principe, toute force de guerre commissionnée au service de l'État fait partie de ses forces militaires, sans avoir égard à la condition antérieure du navire et de son équipage, au fait qu'ils ont ou non appartenu auparavant à la flotte marchande, qu'ils sont attachés actuellement à la flotte de guerre, à temps ou pour toujours. (I Les lois de la guerre et la neutralité, p. 103.)

Later plans.—Several states have volunteer, auxiliary, or subsidized vessels at the present time. The conditions under which these vessels are bound to the respective states vary and the obligations resting on the vessels also vary.

Russia, fearing a possible conflict in consequence of the situation in the East in 1877–78, considering that her regular fleet would not be adequate and that her merchant marine did not possess vessels readily convertible into vessels suitable for warlike purposes, readily adopted the plan of incorporating into the naval force certain vessels purchased by a private association of patriotic citizens. These vessels were to be under the control of the naval authorities and to be officered by naval commanders. The captain and at least one other officer on each ship is a regular imperial commissioned officer. These vessels are equipped so as to be convertible at once into vessels for warlike use. In time of peace these vessels are principally engaged in public service, though they fly the merchant flag and are privately owned.

Speaking of the difficulties in determining the purpose for which vessels are intended, Hall says:

Experts are perfectly able to distinguish vessels built primarily for warlike use; there would, therefore, be little practical difficulty in preventing their exit from neutral ports, and there is no reason for relieving a neutral government from a duty which it can easily perform. But it is otherwise with many vessels primarily fitted for commerce. Perhaps few fast ships are altogether incapable of being so used as to inflict damage upon trade; and there is at least one class of vessels which, on the principles urged by the Government of the United States in the case of the *Georgia*, might fix a neutral state with international responsibility in spite of the exercise by it of the utmost vigilance. Mail steamers of large size are fitted by their strength and build to receive, without much special adaptation, one or two guns of sufficient caliber to render the ships carrying them dangerous cruisers against merchantmen. These vessels, though of distinct character in their more marked forms, melt insensibly into other types, and it would be impossible to lay down a rule under which they could be prevented from being sold to a belligerent and transformed into constituent parts of an expedition immediately outside neutral waters without paralyzing the whole shipbuilding and ship-selling trade of the neutral country. (Hall's International Law, 5th ed., p. 616.)

Pradier Fodéré explains the idea of the volunteer or auxiliary navy as follows:

La marine volontaire ou flotte auxiliaire.—La *marine volontaire*, ou *flotte auxiliaire*, se compose de navires appartenant à des particuliers, fournis librement par eux; incorporés pendant une guerre dans la flotte militaire, ou s'y rattachant étroitement, et versés momentanément dans les forces navales de l'État. Elle est dite *volontaire*, parce que *il est fait appel*, pour sa création, aux particuliers possesseurs de bâtiments aptes à être utilisés comme navires de guerre, ou comme transports. Ces particuliers *mettent librement leurs navires à la disposition du gouvernement*, mais en conservent la propriété et en recrutent les équipages, selon les règles applicables au recrutement de la marine de commerce. Elle est appelée aussi *flotte auxiliaire*, parce que les navires privés dont elle se compose sont destinés à *renforcer* et à *compléter* la flotte militaire de l'État, dont ils sont considérés et traités comme faisant parte intégrante.

Les *marines volontaires*, ou *flottes auxiliaires*, qui augmentent ainsi les forces navales des États par contribution des particuliers, paraissent réservées, aujourd'hui, à remplacer, en temps de guerre, les corsaires et si les belligérants qui les organisent sa-

vent éviter dans cette organization les justes griefs qui ont fait condamner les armements en course, elles constituent une mesure irréprochable, qui concilie le droit de la défense des faibles et la sécurité de la navigation pacifique. (VIII Droit international public, sec. 3102.)

France has a direct arrangement with certain companies whereby vessels are constructed on plans approved by the admiralty which make possible the conversion of these vessels into vessels for warlike use. The vessels are commanded by officers of the navy. At the opening of hostilities they may be incorporated in the war fleet.

Great Britain in 1887 concluded agreements with several important steamship companies. In return for an annual subsidy these companies agree in time of war to turn over certain fast vessels at an appraised valuation and to build ships on plans approved by the admiralty. As the law officers of the British Crown were consulted in regard to the legality of the plans of Prussia for a volunteer navy in 1870 it may be supposed that the agreement made in 1887 by the British Government does not fail to meet the requirements of legality.

By the act of the United States of May 10, 1892, after specifications in regard to registration, tonnage, speed, ownership, etc., it is provided in section 4 as follows:

That any steamship so registered under the provisions of this act may be taken and used by the United States as cruisers or transports upon payment to the owners of the fair actual value of the same at the time of the taking, and if there shall be a disagreement as to the fair actual value at the time of taking between the United States and the owners, then the same shall be determined by two impartial appraisers, one to be appointed by each of said parties, who, in case of disagreement, shall select a third, the award of any two of the three so chosen to be final and conclusive. (27 U. S. Statutes at Large, p. 27.)

United States court decisions.—The general position of a subsidized Spanish vessel is set forth in the opinion rendered in regard to the *Panama* in 1900. There was a contract running between the owners of the vessel and the Spanish Government.

By that contract, concluded between the Spanish Government and the Compania Transatlantica on November 18, 1886, and drawn up and printed in Spanish, the company bound itself to

establish and to maintain for twenty years various lines of mail steamships, one of which included Havana, New York, and other ports of the United States and of Mexico; and the Spanish Government agreed to pay certain subsidies to this company, and not to sibsidize other steamship lines between the same points. Among the provisions of the contract, besides article 26, above quoted, were the following:

By article 25, new ships of the West Indian line must be of iron, or of the material which experience may prove to be the best; must have double-bottomed hulls, divided into water-tight compartments, with all the latest improvements known to the art of naval construction; and "their deck and sides shall have the necessary strength to support the artillery that they are to mount." All the ships of that line must have a capacity for 500 enlisted men on the orlop deck, and a convenient place for them on the main deck. The company, when beginning to build a new ship, shall submit to the minister of the colonies her plans as prepared for commercial and postal service. "The minister shall cause to be studied the measures that should be taken looking to the rapid mounting in time of war of pieces of artillery on board of said vessel; and may compel the company to do such strengthening of the hull as he may deem necessary for the possible mounting of that artillery; said strengthening shall not be required for a greater number than six pieces whose weight and whose force of recoil do not exceed those of a piece of 14 centimeters." The plans of ships already built shall be submitted to the minister of marine, in order that he may cause to be studied the measures necessary to adapt them to war service; and any changes that he may deem necessary or possible for that end shall be made by the company. But in both old and new ships the changes proposed by the ministry must be such as not to prejudice the commercial purposes of the vessels.

By article 35, the vessels, with their engines, armaments, and other appurtenances, must be constantly maintained in good condition for service.

By article 41, the officers and crews of the vessels, and, as far as possible, the engineers, shall be Spaniards.

By article 49, the company may employ its vessels in the transportation of all classes of passengers and merchandise, and engage in all commercial operations that will not prejudice the services that it must render to the state.

By article 60, when by order of the Government munitions of war shall be taken on board, the company may require that it shall be done in the manner and with the precautions necessary to avoid explosions and disasters.

By article 64, in case of the suspension of the mail service by a naval war, or by hostilities in any of the seas or ports visited by the company's ships, the Government may take possession of them with their equipment and supplies, having a valuation of

the whole made by a commission composed to two persons selected by the Government, two by the company, and a fifth person chosen by those four; at the termination of the war, the vessels with their equipment are to be returned to the company, and the Government is to pay to the company an indemnity for any diminution in their value, according to the opinion of the commission, and is also, for the time it has the vessels in its service, to pay 5 per cent on the valuation aforesaid. By article 66, at the end of the war the Government may relieve the company of the performance of the contract if the casualties of the war have disabled it from continuing the service. And by article 67, in extraordinary political circumstances, and though there be no naval war, the Government may charter one or more of the company's vessels, and in that event shall pay an indemnity estimated by the aforesaid commission. (176 U. S. Supreme Court Reports, 535.)

In 1898 the Spanish steamship *Rita* was captured by the United States converted auxiliary cruiser *Yale*, prior to April 30, 1898, the International Navigation Company steamship *City of Paris*, which was under charter by the United States and by terms of the contract "under the entire control of the senior officer on board." The *Yale's* company consisted of two regular officers of the United States Navy and a marine guard of 25 enlisted men, and 269 officers and men doing duty on board and borne on the books of the ship but not commissioned by or enlisted in the service of the United States. The regularly enlisted officers and men made claim that the officers and crew of the *Yale* borne on the books but not enlisted were not entitled to a share of the prize money.

Judge Brawley, in the district court, district of South Carolina, October 13, 1898, held that the *Yale* was, according to the act of 1862, in the class "any armed vessel in the service of the United States" not of the regular navy and not a privateer, and that, as in all cases falling in this class, the statute prescribes that "the whole amount decreed to the captors shall be divided among the ship's company," and further, the judge declares in regard to the non-enlisted portion of the ship's company that—

If they were not "in the service" of the Government while performing that mission, they incurred the hazard of being considered as pirates.

and—

that, by fair interpretation of the statute, all of the ship's company doing duty on board and borne upon the books are entitled as of right to share in the prize money in proportion to their pay, and a decree will be entered accordingly. (89 Federal Reporter, 763.)

Japanese court decisions.—In a judgment before the higher prize court at Sasebo, Japan, on a protest in the case of the steamer *Argun*, April 25, 1905, an opinion is given on certain subsidized vessels.

In considering the nature of the vessels belonging to the Chinese Eastern Railway Company it is to be noted that the managers of the navigation department of the said company are naval officers or other government officials. One manager at Vladivostock is a commander in the navy, and the other a special service official of the department of finance. A perusal of that part of the statistical work entitled "River Vessels in Russian Asia," published by the Russian department of communications, which gives the statistics of vessels in the waters of the Amur region, shows that there are in all 163 steamers and 198 other vessels. It is stated that of these, 45 steamers and 66 other vessels are owned by the Government. Considering now the several owners of these steamers and other vessels, we can not get the total number of Government vessels mentioned above unless the 19 steamers and 60 other vessels belonging to the Chinese Eastern Railway Company are included among the Government vessels. The indemnity for damages caused the Chinese Eastern Railway Company by the Boxer troubles in China in 1900 was claimed, not as due to Russian subjects, but as due to the Russian Government itself. Considering the above facts, a vessel like the steamer in question which belongs to the said company must be recognized as a Government vessel, the property of the Russian Government. Such being the case, although the imperial ordinance No. 20 of 1904, superficially considered, appears to exempt from seizure Russian merchant vessels in general, it was promulgated chiefly to prevent the distress which would be caused by the seizure of merchant vessels owned by Russian subjects which were anchored in the ports of the Empire of Japan, and those which before the enforcement of the ordinance had left foreign ports bound for ports in Japan, which could not have known of the fact that war had begun. There is no need, therefore, of argument to show that a vessel like this which is owned by the Government is not entitled to benefit by the clemency of the imperial ordinance.

Method of commissioning.—In Great Britain, during the Russo-Japanese war, it was claimed that auxiliary

vessels could be commissioned only within the ports of the belligerents.

It is generally held that jurisdiction over the status and internal economy of a vessel is according to domestic law. The belligerent has a right to capture his enemy's ships, whether or not commissioned as war vessels. The vessels subsidized, or belonging to the volunteer or auxiliary navy, being liable to military service *in futuro* are certainly liable to capture *in præsenti*. When such vessels shall attack the enemy is not a matter for international law to determine. They are liable to capture at any time after the outbreak of hostilities. They may correspondingly defend themselves from attack. The main restriction, so far as the belligerents are concerned, is that the vessels shall be under full responsible control.

In an interview during the warm agitation in regard to the action of the *Smolensk* and *Peterburg*, of the Russian volunteer fleet, in July, 1904, M. Neratoff, of the Russian foreign office, was reported as saying of the commissioning of these vessels:

> The questions as to the place where this transformation should be made had not been settled when certain ships passed the Dardanelles as merchantmen, otherwise the Turkish authorities would not have let them through. The commanders of the *Peterburg* and *Smolensk* were wrong in stopping neutral vessels without waiting for further orders. They erred from excess of zeal, but we can understand the state of mind of our officers on seeing ships pass that were no doubt going to carry out documents and ammunition to Japan. In any case, we shall make apologies if it turns out that our suspicions were unfounded. As regards the question of principle involved in the passage of the Dardanelles by auxiliary cruisers, this is a matter for discussion. We have consulted Professor Martens, who is here. But legal considerations will play a secondary part in this affair. The incident is rather political than diplomatic. We shall continue to display a conciliatory spirit, but our auxiliary cruisers will not be withdrawn from the Red Sea. (*The Times*, London, July 26, 1904.)

At the same time the Russian foreign office gave assurance that the volunteer fleet would not again "be utilized for visitation and seizure of neutral ships in the Red Sea."

If Russia maintained that these vessels, the *Smolensk* and *Peterburg*, were not war vessels, then they had no right to make captures but had full right under treaty to

pass the Dardanelles. If they were war vessels only after raising their flag after passing the Dardanelles, then it might be equally proper for vessels of the volunteer navy of another state to pass in through the Dardanelles under a merchant flag and raise the war standard after entering the Black Sea. Doubtless Russia would be reluctant to admit this practice.

Mr. Balfour, in the House of Commons, on July 28, 1904, explaining the attitude of Great Britain, said of the action of the Russian vessels which passed the Dardanelles and captured the *Malacca:*

> We took the strongest possible exception to that course on the ground that no ship of war could issue from the Black Sea, and that in our judgment the members of the volunteer fleet, if they issued from the Black Sea and took belligerent action, either had no right to issue or no right to take that action.

In the same speech he said:

> We have received assurances that the volunteer ships are to be withdrawn from the Red Sea; and I have little doubt that there will be no further desire on the part of the Russian Government to employ them as cruisers.

The sale of a vessel strictly as a commercial transaction by a neutral citizen may be made by any party to any party. The government must not, however, be involved. In a conference between Mr. Balfour, the prime minister, and the London Chamber of Commerce, on August 25, 1904, Mr. Angier observed that—

> the Germans had sold to the Russians a considerable number of fine trading ships, and one of them had been converted into a war vessel, and had actually stopped one of our ships. That was a case of the *Alabama* over again.
>
> Mr. BALFOUR. No; this has has been carefully considered by the law officers and the Government. There can be no doubt that merchant ships may be sold by neutrals to any government, and that that government may turn these ships into cruisers if they please. I do not believe, in this respect, that we can complain of a breach of international law. (*The Times*, London, August 26, 1904.)

Commander von Uslar, of the German navy, says of the use of auxiliary war ships:

> Concerning the hitherto undisputed right of belligerents to equip trading steamers as auxiliary war ships everywhere, except in

territorial waters, England has, during the present war, endeavored to enforce her view that the belligerent can legally commission auxiliary war ships only in his own harbors and not on the high seas. That the general acceptance of this principle would be very beneficial to English interests, but prejudicial to states with small colonial possessions, is very evident; but it does not accord with the principle of international law that the state has unlimited power and jurisdiction on the high seas over all vessels sailing under its flag. In the interests of all the demand is justified that an auxiliary war vessel shall not change its character during the war. (181 North American Review, August, 1905, p. 184.)

The auxiliary navy has been put by some writers in the same category as the militia on land and has been regarded as subject to similar regulations. Some maintain that it should be enrolled for state service under responsible officers, be paid from the public treasury and not in proportion to the captures made, and that the vessels should also be paid for fixed periods and not in proportion to the captures made by them. In case of loss of a vessel in war a liberal price should be paid therefor.

It has been suggested that a distinction might be made according to the service rendered. If a vessel of the volunteer navy confined its services to the transport of troops, coal, and the like, its action would be legitimate; if it pursued and captured private property, it would be engaged in privateering forbidden by the first article of the treaty of Paris, 1856 (4 Revue Générale de Droit International Public, 1897, p. 696). The above is not the generally accepted view. It has been maintained also that the private ownership of vessels which are to engage in war should not be permitted. The distinction between the transport by one vessel of fuel which would enable another vessel to pursue and capture an enemy vessel and the pursuit of the enemy vessel by the transport is not the point to be considered in distinguishing a privateer from a public war vessel, but rather the conditions under which the act takes place. The question is rather one of governmental naval control and conformity to the usages of war. That a vessel used by a belligerent for hostile purposes must be owned by the state is not a matter of great importance and is not easily determined in time of war. It

would not be contended that horses or other means of warfare might not be loaned by private persons for service in war on land.

Hall gives a somewhat full statement of the English attitude in regard to what constitutes a public vessel:

> Public vessels of the state consist in ships of war, in government ships not armed as vessels of war, such as royal or admiralty yachts, transports, or storeships, and in vessels temporarily employed, whether as transports or otherwise, provided that they are used for public purposes only, that they are commanded by an officer holding such a commission as will suffice to render the ship a public vessel by the law of his state, and that they satisfy other conditions which may be required by that law. The character of a vessel professing to be public is usually evidenced by the flag and pendant which she carries, and if necessary by firing a gun. When in the absence of, or notwithstanding, these proofs any doubt is entertained as to the legitimateness of her claim, the statement of the commander on his word of honor that the vessel is public is often accepted, but the admission of such statement as proof is a matter of courtesy. On the other hand, subject to an exception which will be indicated directly, the commission under which the commander acts must necessarily be received as conclusive, it being a direct attestation of the character of the vessel made by the competent authority within the state itself. A fortiori attestation made by the government itself is a bar to all further inquiry. (International Law, 5th ed., p. 161.)
>
> The act of commissioning a vessel is an act of sovereignty, and no act of sovereignty can be done within the dominions of another sovereign without his express or tacit permission. Without such leave a commission can only acquire value as against the state in which a vessel has been bought, or has been built and fitted out, at the moment when she issues from the territorial waters. Up to that time, though invested with minor privileges, she is far, if she be a ship of war, from enjoying the full advantages of a public character. It is needless to say that, on the other hand, if the vessel reenters the territorial waters five minutes after she has left them she does so with all the privileges of a public vessel of her state. It is to be noted that tacit leave to commission a ship can not be lightly supposed. A state must always be presumed to be jealous of its rights of sovereignty, and either strong circumstances implying recognition in the particular case, or the general practice of the state itself, must be adduced before the presumption can be displaced. (Ibid, p. 163.)

Need of established character.—It is necessary that there should be some mark by which the character of a

vessel may be established so far as a neutral may be concerned. It is not in any way reasonable to expect that a vessel may one day fly a merchant flag and the next day that of a ship of war and the following day that of a merchant vessel again. If it is proper for a vessel to sail from a port as a merchant vessel and on the high sea to assume the character of a war vessel, would it not be possible to reverse the process and make such changes as frequently as might serve a belligerent's purpose.

It is certain that acts of war on the sea should be confined to war vessels and that merchant vessels should not visit, search, or capture merchant vessels of an enemy or of a neutral. Under certain conditions a war vessel may, however, do these things. A merchant vessel is subject to the jurisdiction of the port in which it may be, so far as the local regulations require. A vessel of war is to a large extent exempt from local jurisdiction. There is little restriction upon the nature of articles which a merchant vessel may take on board. A war vessel of a belligerent in time of hostilities may not in a neutral port do certain acts or take certain articles on board which would be allowed in time of peace or to a merchant vessel in time of war.

If no restrictions are made, the neutrals may through ignorance of the character of a vessel furnish it with supplies of a forbidden amount or character. A vessel which could change its character at will might enter a neutral port repeatedly as a merchant vessel and after each departure again assume a warlike character, thus making of a neutral port a base. Of course, it is not reasonable to expect that such acts would be tolerated.

Summary.—There seem to be certain general considerations which should guide in the regulation of the use of subsidized, auxiliary, or volunteer vessels:

1. Such vessels should be during the war public vessels under regularly commissioned officers in order that the principle of Article I of the declaration of Paris, 1856, may be regarded. They should be incorporated in the navy.

2. The neutral in whose port such vessel may be or within whose port such vessel may come is entitled to

know the character of the vessel in order that the laws of neutrality in furnishing supplies, etc., may be observed.

3. The character once assumed should not be changed except under adequate restrictions in order that reasonable security may be given to the neutral in his relation to the vessel.

Conclusions.—From the foregoing it is evident that the use, for all purposes of naval warfare, of auxiliary, subsidized, or volunteer vessels, regularly incorporated in the naval forces of a country, is in accord with general opinion and practice, and that this addition to their regular naval forces in time of war is contemplated by nearly all if not all the principal maritime nations. In fact auxiliaries have been so used in all recent naval wars. To secure for subsidized, auxiliary, and volunteer vessels the proper status in time of war, the following regulations are proposed:

1. When a subsidized, auxiliary, or volunteer vessel is used for military purposes it must be in command of a duly commissioned officer in the military service of the government.

2. When subsidized, auxiliary , or volunteer vessels, or vessels adapted for or liable to be incorporated into the military service of a belligerent, are in a neutral port in the character of commercial vessels at the outbreak of hostilities, the neutral may require that they immediately furnish satisfactory evidence whether they will assume a military or retain a commercial character.

3. Subsidized, auxiliary, or volunteer vessels, or vessels adapted for or liable to be incorporated into the military service of a belligerent, on entering a neutral port after the outbreak of hostilities, may be required by the neutral immediately to make known whether their character is military or commercial.

4. Until publicly changed in a home port, such vessels as have made known their character must retain as regards neutrals the character assumed in the neutral port.

5. The exercise of belligerent authority toward a neutral by subsidized, auxiliary, or volunteer vessels is sufficient to establish their military character.

APPENDIX.

CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED IN ARMIES IN THE FIELD, GENEVA, 1906.

APPENDIX.

[Translation.]

CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED IN ARMIES IN THE FIELD.

His Majesty the Emperor of Germany, King of Prussia; His Excellency the President of the Argentine Republic; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Royal Highness the Prince of Bulgaria; His Excellency the President of the Republic of Chile; His Majesty the Emperor of China; His Majesty the King of the Belgians, Sovereign of the Congo Free State; His Majesty the Emperor of Corea; His Majesty the King of Denmark; His Majesty the King of Spain; the President of the United States of America; the President of the United States of Brazil; the President of the United Mexican States; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India; His Majesty the King of the Hellenes; the President of the Republic of Guatemala; the President of the Republic of Honduras; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Highness the Prince of Montenegro; His Majesty the King of Norway; Her Majesty the Queen of the Netherlands; the President of the Republic of Peru; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden; the Swiss Federal Council; the President of the Oriental Republic of Uruguay,

Being equally animated by the desire to lessen the inherent evils of warfare as far as is within their power, and wishing for this purpose to improve and supplement the provisions agreed upon at Geneva on August 22, 1864, for the amelioration of the condition of the wounded in armies in the field,

CONVENTION POUR L'AMÉLIORATION DU SORT DES BLESSÉS ET MALADES DANS LES ARMÉES EN CAMPAGNE.

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse; Son Excellence le Président de la République Argentine; Sa Majesté l'Empereur d'Autriche, Roi de Bohême, etc., et Roi Apostolique de Hongrie; Sa Majesté le Roi des Belges; Son Altesse Royale le Prince de Bulgarie; Son Excellence le Président de la République du Chili; Sa Majesté l'Empereur de Chine; Sa Majesté le Roi des Belges, Souverain de l'État indépendant du Congo; Sa Majesté l'Empereur de Corée; Sa Majesté le Roi de Danemark; Sa Majesté le Roi d'Espagne; le Président des États-Unis d'Amérique; le Président des États-Unis du Brésil; le Président des États-Unis Mexicains; le Président de la République Française; Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande, Empereur des Indes; Sa Majesté le Roi des Hellènes; le Président de la République de Guatémala; le Président de la République de Honduras; Sa Majesté le Roi d'Italie; Sa Majesté l'Empereur du Japon; Son Altesse Royale le Grand-Duc de Luxembourg, Duc de Nassau; Son Altesse le Prince de Montenegro; Sa Majesté le Roi de Norvège; Sa Majesté la Reine des Pays-Bas; le Président de la République du Pérou; Sa Majesté Impériale le Schah de Perse; Sa Majesté le Roi de Portugal et des Algarves, etc.; Sa Majesté le Roi de Roumanie; Sa Majesté l'Empereur de Toutes les Russies; Sa Majesté le Roi de Serbie; Sa Majesté le Roi de Siam; Sa Majesté le Roi de Suède; le Conseil Fédéral Suisse; le Président de la République Orientale de l'Uruguay.

Également animés du désir de diminuer, autant qu'il dépend d'eux, les maux inséparables de la guerre et voulant, dans ce but, perfectionner et compléter les dispositions convenues à Genève, le 22 août 1864, pour l'amélioration du sort des militaires blessés ou malades dans les armées en campagne;

Have decided to conclude a new convention to that effect, and have appointed as their plenipotentiaries, to wit:

His Majesty the Emperor of Germany, King of Prussia: His Excellency the Chamberlain and Actual Privy Councilor A. de Bülow, Envoy Extraordinary and Minister Plenipotentiary at Berne; General of Brigade Baron de Manteuffel; Medical Inspector and Surgeon-General Dr. Villaret (with rank of general of brigade); Dr. Zorn, Privy Councilor of Justice, ordinary professor of law at the University of Bonn, Solicitor of the Crown;

His Excellency the President of the Argentine Republic: His Excellency Mr. Enrique B. Moreno, Envoy Extraordinary and Minister Plenipotentiary at Berne; Mr. Molina Salas, Consul-General in Switzerland;

His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary: His Excellency Baron Heidler de Egeregg et Syrgenstein, Actual Privy Councilor, Envoy Extraordinary and Minister Plenipotentiary at Berne;

His Majesty the King of the Belgians: Colonel of Staff Count de T'Serclaes, Chief of Staff of the Fourth Military District;

His Royal Highness the Prince of Bulgaria: Dr. Marin Rousseff, Chief Medical Officer; Captain of Staff Boris Sirmanoff;

His Excellency the President of the Republic of Chile: Mr. Augustin Edwards, Envoy Extraordinary and Minister Plenipotentiary;

His Majesty the Emperor of China: His Excellency Mr. Lou Tseng Tsiang, Envoy Extraordinary and Minister Plenipotentiary to the Hague;

His Majesty the King of the Belgians, Sovereign of the Congo Free State: Colonel of Staff Count de T'Serclaes, Chief of staff of the Fourth Military District of Belgium;

His Majesty the Emperor of Corea: His Excellency Mr. Tsunetada Kato, Envoy Extraordinary and Minister Plenipotentiary of Japan to Brussels;

His Majesty the King of Denmark: Mr. Laub, Surgeon-General, Chief of the Medical Corps of the Army;

His Majesty the King of Spain: His Excellency Mr. Silverio de Baguer y Corsi, Count of Baguer, Minister Resident;

The President of the United States of America: Mr. William Cary Sanger, former Assistant Secretary of War of the United

Ont résolu de conclure une nouvelle Convention à cet effet, et ont nommé pour leurs Plénipotentiaires, savoir:

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse: S. E. M. le chambellan et conseiller intime actuel A. de Bülow, envoyé extraordinaire et ministre plénipotentiaire à Berne; M. le général de brigade baron de Manteuffel; M. le médecin-inspecteur, médecin général Dr Villaret (avec rang de général de brigade); M. le Dr Zorn, conseiller intime de justice, professeur ordinaire de droit à l'Université de Bonn, syndic de la couronne;

Son Excellence le Président de la République Argentine: S. E. M. Enrique B. Moreno, envoyé extraordinaire et ministre plénipotentiaire à Berne; M. Molina Salas, consul général en Suisse;

Sa Majesté l'Empereur d'Autriche, Roi de Bohême, etc., et Roi Apostolique de Hongrie: S. E. M. le baron Heidler de Egeregg et Syrgenstein, conseiller intime actuel, envoyé extraordinaire et ministre plénipotentiaire à Berne;

Sa Majesté le Roi des Belges: M. le colonel d'état-major comte de T'Serclaes, chef d'état-major de la 4me circonscription militaire;

Son Altesse Royale le Prince de Bulgarie: M. le Dr Marin Rousseff, directeur du service sanitaire; M. le capitaine d'état-major Boris Sirmanoff;

Son Excellence le Président de la République du Chili: M. Agustin Edwards, envoyé extraordinaire et ministre plénipotentiaire;

Sa Majesté l'Empereur de Chine: S. E. M. Lou Tseng Tsiang, envoyé extraordinaire et ministre plénipotentiaire à La Haye;

Sa Majesté le Roi des Belges, Souverain de l'État indépendant du Congo: M. le colonel d'état-major comte de T'Serclaes, chef d'état-major de la 4me circonscription militaire de Belgique;

Sa Majesté l'Empereur de Corée: S. E. M. Kato Tsunetada, envoyé extraordinaire et ministre plénipotentiaire du Japon à Bruxelles;

Sa Majesté le Roi de Danemark: M. Laub, médecin général, chef du corps des médecins de l'armée;

Sa Majesté le Roi d'Espagne: S. E. M. Silverio de Baguer y Corsi, comte de Baguer, ministre résident;

Le Président des États-Unis d'Amérique: M. William Cary Sanger, ancien sous-secrétaire de la guerre des États-Unis

States of America; Rear Admiral Charles S. Sperry, President of the Naval War College; Brigadier-General George B. Davis, Judge-Advocate-General of the Army; Brigadier-General Robert M. O'Reilly, Surgeon-General of the Army;

The President of the United States of Brazil: Dr. Carlos Lemgruber-Kropf, Chargé d'Affaires at Berne; Colonel of Engineers Roberto Trompowski, Leitao d'Almeida, Military Attaché to the Brazilian Legation at Berne;

The President of the United Mexican States: General of Brigade José Maria Perez;

The President of the French Republic: His Excellency Mr. Révoil, Ambassador to Berne; Mr. Louis Renault, Member of the Institute of France, Minister Plenipotentiary, Jurisconsult of the Ministry of Foreign Affairs, Professor in the Faculty of Law at Paris; Colonel Olivier of Reserve Artillery; Chief Surgeon Pauzat of the Second Class;

His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India: Major-General Sir John Charles Ardagh, K. C. M. G., K. C. L. E., C. B.; Professor Thomas Erskine Holland, K. C., D. C. L.; Sir John Furley, C. B.; Lieutenant-Colonel William Grant Macpherson, C. M. G., R. A. M. C.;

His Majesty the King of the Hellenes: Mr. Michel Kebedgy, Professor of International Law at the University of Berne;

The President of the Republic of Guatemala: Mr. Manuel Arroyo, Chargé d'Affaires at Paris; Mr. Henri Wiswald, Consul-General to Berne, residing at Geneva;

The President of the Republic of Honduras: Mr. Oscar Hœpfl, Consul-General to Berne;

His Majesty the King of Italy: Marquis Roger Maurigi di Castel Maurigi, Colonel in His Army, Grand Officer of His Royal Order of the SS. Maurice and Lazare; Major-General Giovanni Randone, Military Medical Inspector, Commander of His Royal Order of the Crown of Italy;

His Majesty the Emperor of Japan: His Excellency Mr. Tsunetada Kato, Envoy Extraordinary and Minister Plenipotentiary to Brussels;

His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau: Staff Colonel Count de T'Serclaes, Chief of Staff of the Fourth Military District of Belgium;

d'Amérique; M. le contre-amiral Charles S. Sperry, président de l'école de guerre navale; M. le général de brigade George B. Davis, avocat général de l'armée; M. le général de brigade Robert-M. O'Reilly, médecin général de l'armée;

Le Président des États-Unis du Brésil: M. le Dr Carlos Lemgruber-Kropf, chargé d'affaires à Berne; M. le colonel du génie Roberto Trompowski Leitao d'Almeida, attaché militaire à la légation du Brésil à Berne;

Le Président des États-Unis Mexicains: M. le général de brigade José-Maria Perez;

Le Président de la République Française: S. E. M. Révoil, ambassadeur à Berne; M. Louis Renault, membre de l'Institut de France, ministre plénipotentiaire, jurisconsulte du ministère des affaires étrangères, professeur à la faculté de droit de Paris; M. le colonel breveté d'artillerie de réserve Olivier; M. le médecin principal de 2me classe Pauzat;

Sa Majesté le Roi du Royaume-Uni de Grande-Bretagne et d'Irlande, Empereur des Indes: M. le major général Sir John Charles Ardagh, K. C. M. G., K. C. I. E., C. B.; M. le professeur Thomas Erskine Holland, K. C., D. C. L.; Sir John Furley, C. B.; M. le lieutenant-colonel William Grant Macpherson, C. M. G., R. A. M. C.;

Sa Majesté le Roi des Hellènes: M. Michel Kebedgy, professeur de droit international à l'Université de Berne;

Le Président de la République de Guatémala: M. Manuel Arroyo, chargé d'affaires à Paris; M. Henri Wiswald, consul général à Berne, en résidence à Genève;

Le Président de la République de Honduras: M. Oscar Hœpfl, consul général à Berne;

Sa Majesté le Roi d'Italie: M. le marquis Roger Maurigi di Castel Maurigi, colonel dans Son armée, grand officier de Son ordre royal des SS. Maurice et Lazare; M. le major-général médecin Giovanni Randone, inspecteur sanitaire militaire, commandeur de Son ordre royal de la Couronne d'Italie;

Sa Majesté l'Empereur du Japon: S. E. M. Kato Tsunetada, envoyé extraordinaire et ministre plénipotentiaire à Bruxelles;

Son Altesse Royale le Grand-Duc de Luxembourg, Duc de Nassau: M. le colonel d'état-major comte de T'Serclaes, chef d'état-major de la 4me circonscription militaire de Belgique;

His Highness the Prince of Montenegro: Mr. E. Odier, Envoy Extraordinary and Minister Plenipotentiary of the Swiss Confederation in Russia; Colonel Mürset, Chief Surgeon of the Swiss Federal Army;

His Majesty the King of Norway: Captain Daae, of the Medical Corps of the Norwegian Army;

Her Majesty the Queen of the Netherlands: Lieutenant-General (retired) Jonkheer J. C. C. den Beer Poortugael, Member of the Council of State; Colonel A. A. J. Quanjer, Chief Medical Officer, First Class;

The President of the Republic of Peru: Mr. Gustavo de la Fuente, First Secretary of the Legation of Peru at Paris;

His Imperial Majesty the Shah of Persia: His Excellency Mr. Samad Khan Momtaz-os-Saltaneh, Envoy Extraordinary and Minister Plenipotentiary at Paris;

His Majesty the King of Portugal and of the Algarves, etc.: His Excellency Mr. Alberto d'Oliveira, Envoy Extraordinary and Minister Plenipotentiary at Berne; Mr. José Nicolau Raposo-Botelho, Colonel of Infantry, former Deputy, Superintendent of the Royal Military College at Lisbon;

His Majesty the King of Roumania: Dr. Sache Stephanesco, Colonel of Reserve;

His Majesty the Emperor of All the Russias: His Excellency Privy Councilor de Martens, Permanent Member of the Council of the Ministry of Foreign Affairs of Russia;

His Majesty the King of Servia: Mr. Milan St. Markovitch, Secretary-General of the Ministry of Justice; Colonel Dr. Sondermayer, Chief of the Medical Division of the War Ministry;

His Majesty the King of Siam: Prince Charoon, Chargé d'Affaires at Paris; M. Corragioni d'Orelli, Counselor of Legation at Paris;

His Majesty the King of Sweden: M. Sörensen, Chief Surgeon of the Second Division of the Army;

The Swiss Federal Council: Mr. E. Odier, Envoy Extraordinary and Minister Plenipotentiary in Russia; Colonel Mürset, Chief Surgeon of the Federal Army;

The President of the Oriental Republic of Uruguay: Mr. Alexandre Herosa, Chargé d'Affaires at Paris,

Son Altesse le Prince de Montenegro: M. E. Odier, envoyé extraordinaire et ministre plénipotentiaire de la Confédération suisse en Russie; M. le colonel Mürset, médecin en chef de l'armée fédérale suisse;

Sa Majesté le Roi de Norvège: M. le capitaine Daae, du corps sanitaire de l'armée norvégienne;

Sa Majesté la Reine des Pays-Bas: M. le lieutenant-général en retraite Jonkheer J. C. C. den Beer Poortugael, membre du Conseil d'État; M. le colonel A. A. J. Quanjer, officier de santé en chef de 1re classe;

Le Président de la République du Pérou: M. Gustavo de la Fuente, premier secrétaire de la légation du Pérou à Paris;

Sa Majesté Impériale le Schah de Perse: S. E. M. Samad Khan Momtaz-os-Saltaneh, envoyé extraordinaire et ministre plénipotentiaire à Paris;

Sa Majesté le Roi de Portugal et des Algarves, etc.: S. E. M. Alberto d'Oliveira, envoyé extraordinaire et ministre plénipotentiaire à Berne; M. José Nicolau Raposo-Botelho, colone d'infanterie, ancien député, directeur du Royal collège militaire à Lisbonne;

Sa Majesté le Roi de Roumanie: M. le Dr Sache Stephanesco, colonel de réserve;

Sa Majesté l'Empereur de Toutes les Russies: S. E. M. le conseiller privé de Martens, membre permanent du conseil du ministère des affaires étrangères de Russie;

Sa Majesté le Roi de Serbie: M. Milan St. Markovitch, secrétaire général du ministère de la justice; M. le colonel Dr Sondermayer, chef de la division sanitaire au ministère de la guerre;

Sa Majesté le Roi de Siam: M. le prince Charoon, chargé d'affaires à Paris; M. Corragioni d'Orelli, conseiller de légation à Paris;

Sa Majesté le Roi de Suède: M. Sörensen; médecin en chef de la 2me division de l'armée;

Le Conseil Fédéral Suisse: M. E. Odier, envoyé extraordinaire et ministre plénipotentiaire en Russie; M. le colonel Mürset, médecin en chef de l'armée fédérale;

Le Président de la République Orientale de l'Uruguay: M. Alexandre Herosa, chargé d'affaires à Paris;

Who, after having communicated to each other their full powers, found in good and due form, have agreed on the following:

CHAPTER I.—*The sick and wounded.*

ARTICLE 1.

Officers, soldiers, and other persons officially attached to armies, who are sick or wounded, shall be respected and cared for, without distinction of nationality, by the belligerent in whose power they are.

A belligerent, however, when compelled to leave his wounded in the hands of his adversary, shall leave with them, so far as military conditions permit, a portion of the personnel and matériel of his sanitary service to assist in caring for them.

ART. 2.

Subject to the care that must be taken of them under the preceding article, the sick and wounded of an army who fall into the power of the other belligerent become prisoners of war, and the general rules of international law in respect to prisoners become applicable to them.

The belligerents remain free, however, to mutually agree upon such clauses, by way of exception or favor, in relation to the wounded or sick as they may deem proper. They shall especially have authority to agree:

1. To mutually return the sick and wounded left on the field of battle after an engagement.

2. To send back to their own country the sick and wounded who have recovered, or who are in a condition to be transported and whom they do not desire to retain as prisoners.

3. To send the sick and wounded of the enemy to a neutral state, with the consent of the latter and on condition that it shall charge itself with their internment until the close of hostilities.

ART. 3.

After every engagement the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and to protect the wounded and dead from robbery and ill treatment.

He will see that a careful examination is made of the bodies of the dead prior to their interment or incineration.

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit:

CHAPITRE PREMIER.—*Des blessés et malades.*

ARTICLE PREMIER.

Les militaires et les autres personnes officiellement attachées aux armées, qui seront blessés ou malades, devront être respectés et soignés, sans distinction de nationalité, par le belligérant qui les aura en son pouvoir.

Toutefois, le belligérant, obligé d'abandonner des malades ou des blessés à son adversaire, laissera avec eux, autant que les circonstances militaires le permettront, une partie de son personnel et de son matériel sanitaires pour contribuer à les soigner.

ART. 2.

Sous réserve des soins à leur fournir en vertu de l'article précédent, les blessés au malades d'une armée tombés au pouvoir de l'autre belligèrant sont prisonniers de guerre et les règles générales du droit des gens concernant les prisonniers leur sont applicables.

Cependant, les belligérants restent libres de stipuler entre eux, à l'égard des prisonniers blessés ou malades, telles clauses d'exception ou de faveur qu'ils jugeront utiles; ils auront, notamment, la faculté de convenir:

De se remettre réciproquement, après un combat, les blessés laissés sur le champ de bataille;

De renvoyer dans leur pays, après les avoir mis en état d'être transportés ou après guérison, les blessés ou malades qu'ils ne voudront pas garder prisonniers;

De remettre à un État neutre, du consentement de celui-ci, des blessés ou malades de la partie adverse, à la charge par l'État neutre de les interner jusqu'à la fin des hostilités.

ART. 3.

Après chaque combat, l'occupant du champ de bataille prendra des mesures pour rechercher les blessés et pour les faire protéger, ainsi que les morts, contre le pillage et les mauvais traitements.

Il veillera à ce que l'inhumation ou l'incinération des morts soit précédée d'un examen attentif de leurs cadavres.

ART. 4.

As soon as possible each belligerent shall forward to the authorities of their country or army the marks or military papers of identification found upon the bodies of the dead, together with a list of names of the sick and wounded taken in charge by him.

Belligerents will keep each other mutually advised of interntments and transfers, together with admissions to hospitals and deaths which occur among the sick and wounded in their hands. They will collect all objects of personal use, valuables, letters, etc., which are found upon the field of battle, or have been left by the sick or wounded who have died in sanitary formations or other establishments, for transmission to persons in interest through the authorities of their own country.

ART. 5.

Military authority may make an appeal to the charitable zeal of the inhabitants to receive and, under its supervision, to care for the sick and wounded of the armies, granting to persons responding to such appeals special protection and certain immunities.

CHAPTER II.—*Sanitary formations and establishments.*

ART. 6.

Mobile sanitary formations (*i. e.*, those which are intended to accompany armies in the field) and the fixed establishments belonging to the sanitary service shall be protected and respected by belligerents.

ART. 7.

The protection due to sanitary formations and establishments ceases if they are used to commit acts injurious to the enemy.

ART. 8.

A sanitary formation or establishment shall not be deprived of the protection accorded by article 6 by the fact:

1. That the personnel of a formation or establishment is armed and uses its arms in self-defense or in defense of its sick and wounded.

2. That in the absence of armed hospital attendants, the formation is guarded by an armed detachment or by sentinels acting under competent orders.

ART. 4.

Chaque belligérant enverra, dès qu'il sera possible, aux autorités de leur pays ou de leur armée les marques ou pièces militaires d'identité trouvées sur les morts et l'état nominatif des blessés ou malades recueillis par lui.

Les belligérants se tiendront réciproquement au courant des internements et des mutations, ainsi que des entrées dans les hôpitaux et des décès survenus parmi les blessés et malades en leur pouvoir. Ils recueilleront tous les objets d'un usage personnel, valeurs, lettres, etc., qui seront trouvés sur les champs de bataille ou délaissés par les blessés ou malades décédés dans les établissements et formations sanitaires, pour les faire transmettre aux intéressés par les autorités de leur pays.

ART. 5.

L'autorité militaire pourra faire appel au zèle charitable des habitants pour recueillir et soigner, sous son contrôle, des blessés ou malades des armées, en accordant aux personnes ayant répondu à cet appel une protection spéciale et certaines immunités.

CHAPTITRE II.—*Des formations et établissements sanitaires.*

ART. 6.

Les formations sanitaires mobiles (c'est-à-dire celles qui sont destinées à accompagner les armées en campagne) et les établissements fixes du service de santé seront respectés et protégés par les belligérants.

ART. 7.

La protection due aux formations et établissements sanitaires cesse si l'on en use pour commettre des actes nuisibles à l'ennemi.

ART. 8.

Ne sont pas considérés comme étant de nature à priver une formation ou un établissement sanitaire de la protection assurée par l'article 6:

1° Le fait que le personnel de la formation ou de l'établissement est armé et qu'il use de ses armes pour sa propre défense ou celle de ses malades et blessés;

2° Le fait qu'à défaut d'infirmiers armés, la formation ou l'établissement est gardé par un piquet ou des sentinelles munis d'un mandat régulier;

3. That arms or cartridges, taken from the wounded and not yet turned over to the proper authorities, are found in the formation or establishment.

CHAPTER III.—*Personnel.*

ART. 9.

The personnel charged exclusively with the removal, transportation, and treatment of the sick and wounded, as well as with the administration of sanitary formations and establishments, and the chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be considered as prisoners of war.

These provisions apply to the guards of sanitary formations and establishments in the case provided for in section 2 of article 8.

ART. 10.

The personnel of volunteer aid societies, duly recognized and authorized by their own governments, who are employed in the sanitary formations and establishments of armies, are assimilated to the personnel contemplated in the preceding article, upon condition that the said personnel shall be subject to military laws and regulations.

Each state shall make known to the other, either in time of peace or at the opening, or during the progress of hostilities, and in any case before actual employment, the names of the societies which it has authorized to render assistance, under its responsibility, in the official sanitary service of its armies.

ART. 11.

A recognized society of a neutral state can only lend the services of its sanitary personnel and formations to a belligerent with the prior consent of its own government and the authority of such belligerent. The belligerent who has accepted such assistance is required to notify the enemy before making any use thereof.

ART. 12.

Persons described in articles 9, 10, and 11 will continue in the exercise of their functions, under the direction of the enemy, after they have fallen into his power.

When their assistance is no longer indispensable they will be sent back to their army or country, within such period and

3° Le fait qu il est trouvé dans la formation ou l'établissement des armes et cartouches retirées aux blessés et n'ayant pas encore été versées au service compétent.

CHAPITRE III.—*Du personnel.*

ART. 9.

Le personnel exclusivement affecté à l'enlèvement, au transport et au traitement des blessés et des malades, ainsi qu'à l'administration des formations et établissements sanitaires, les aumôniers attachés aux armées, seront respectés et protégés en toute circonstance; s'ils tombent entre les mains de l'ennemi, ils ne seront pas traités comme prisonniers de guerre.

Ces dispositions s'appliquent au personnel de garde des formations et établissements sanitaires dans le cas prévu à l'article 8, n°. 2.

ART. 10.

Est assimilé au personnel visé à l'article précédent le personnel des Sociétés de secours volontaires dûment reconnues et autorisées par leur Gouvernement, qui sera employé dans les formations et établissements sanitaires des armées, sous la réserve que ledit personnel sera soumis aux lois et règlements militaires.

Chaque État doit noitfier à l'autre, soit dès le temps de paix, soit à l'ouverture ou au cours des hostilités, en tout cas avant tout emploi effectif, les noms des Sociétés qu'il a autorisées à prêter leur concours, sous sa responsabilité, au service sanitaire officiel de ses armées.

ART. 11.

Une Société reconnue d'un pays neutre ne peut prêter le concours de ses personnels et formations sanitaires à un belligérant qu'avec l'assentiment préalable de son propre Gouvernement et l'autorisation du belligérant lui-même.

Le belligérant qui a accepté le secours est tenu, avant tout emploi, d'en faire la notification à son ennemi.

ART. 12.

Les personnes désignées dans les articles 9, 10 et 11 continueront, après qu'elles seront tombées au pouvoir de l'ennemi, à remplir leurs fonctions sous sa direction.

Lorsque leur concours ne sera plus indispensable, elles seront renvoyées à leur armée ou à leur pays dans les délais et

by such route as may accord with military necessity. They will carry with them such effects, instruments, arms, and horses as are their private property.

ART. 13.

While they remain in his power the enemy will secure to the personnel mentioned in article 9 the same pay and allowances to which persons of the same grade in his own army are entitled.

CHAPTER IV.—*Matériel.*

ART. 14.

If mobile sanitary formations fall into the power of the enemy, they shall retain their matériel, including the teams, whatever may be the means of transportation and the conducting personnel. Competent military authority, however, shall have the right to employ it in caring for the sick and wounded. The restitution of the matériel shall take place in accordance with the conditions prescribed for the sanitary personnel, and, as far as possible, at the same time.

ART. 15.

Buildings and matériel pertaining to fixed establishments shall remain subject to the laws of war, but can not be diverted from their use so long as they are necessary for the sick and wounded. Commanders of troops engaged in operations, however, may use them, in case of important military necessity, if, before such use, the sick and wounded who are in them have been provided for.

ART. 16.

The matériel of aid societies admitted to the benefits of this convention, in conformity to the conditions therein established, is regarded as private property and, as such, will be respected under all circumstances, save that it is subject to the recognized right of requisition by belligerents in conformity to the laws and usages of war.

CHAPTER V.—*Convoys of evacuation.*

ART. 17.

Convoys of evacuation shall be treated as mobile sanitary formations subject to the following special provisions:

suivant l'itinéraire compatibles avec les nécessités militaires.

Elles emporteront, alors, les effets, les instruments, les armes et les chevaux qui sont leur propriété particulière.

ART. 13.

L'ennemi assurera au personnel visé par l'article 9, pendant qu'il sera en son pouvoir, les mêmes allocations et la même solde qu'au personnel des mêmes grades de son armée.

CHAPITRE IV.—*Du matériel.*

ART. 14.

Les formations sanitaires mobiles conserveront, si elles tombent au pouvoir de l'ennemi, leur matériel, y compris les attelages, quels que soient les moyens de transport et le personnel conducteur.

Toutefois, l'autorité militaire compétente aura la faculté de s'en servir pour les soins des blessés et malades; la restitution du matériel aura lieu dans las conditions prévues pour le personnel sanitaire, et, autant que possible, en même temps.

ART. 15.

Les bâtiments et le matériel des établissements fixes demeurent soumis aux lois de guerre, mais ne pourront être détournés de leur emploi, tant qu'ils seront nécesaires aux blessés et aux malades.

Toutefois, les commandants des troupes d'opérations pourront en disposer, en cas de nécessités militaires importantes, en assurant au préalable le sort des blessés et malades qui s'y trouvent.

ART. 16.

Le matériel des Sociétés de secours, admises au bénéfice de la Convention conformément aux conditions déterminées par celle-ci, est considéré comme propriété privée et, comme tel, respecté en toute circonstance, sauf le droit de réquisition reconnu aux belligérants selon les lois et usages de la guerre.

CHAPITRE V.—*Des convois d'évacuation.*

ART. 17.

Les convois d'évacuation seront traités comme les formations sanitaires mobiles, sauf les dispositions spéciales suivantes:

1. A belligerent intercepting a convoy may, if required by military necessity, break up such convoy, charging himself with the care of the sick and wounded whom it contains.

2. In this case the obligation to return the sanitary personnel, as provided for in article 12, shall be extended to include the entire military personnel employed, under competent orders, in the transportation and protection of the convoy.

The obligation to return the sanitary matériel, as provided for in article 14, shall apply to railway trains and vessels intended for interior navigation which have been especially equipped for evacuation purposes, as well as to the ordinary vehicles, trains, and vessels which belong to the sanitary service.

Military vehicles, with their teams, other than those belonging to the sanitary service, may be captured.

The civil personnel and the various means of transportation obtained by requisition, including railway matériel and vessels utilized for convoys, are subject to the general rules of international law.

CHAPTER VI.—*Distinctive emblem.*

ART. 18.

Out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by the reversal of the federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

ART. 19.

This emblem appears on flags and brassards as well as upon all matériel appertaining to the sanitary service, with the permission of the competent military authority.

ART. 20.

The personnel protected in virtue of the first paragraph of article 9, and articles 10 and 11, will wear attached to the left arm a brassard bearing a red cross on a white ground, which will be issued and stamped by competent military authority, and accompanied by a certificate of identity in the case of persons attached to the sanitary service of armies who do not have military uniform.

ART. 21.

The distinctive flag of the convention can only be displayed over the sanitary formations and establishments which the

1° Le belligérant interceptant un convoi pourra, si les nécessités militaires l'exigent, le disloquer en se chargeant des malades et blessés qu'il contient.

2° Dans ce cas, l'obligation de renvoyer le personnel sanitaire, prévue à l'article 12, sera étendue à tout le personnel militaire préposé au transport ou à la garde du convoi et muni à cet effet d'un mandat régulier.

L'obligation de rendre le matériel sanitaire, prévue à l'article 14, s'appliquera aux trains de chemins de fer et bateaux de la navigation intérieure spécialement organisés pour les évacuations, ainsi qu'au matériel d'aménagement des voitures, trains et bateaux ordinaires appartenant au service de santé.

Les voitures militaires, autres que celles du service de santé, pourront être capturées avec leurs attelages.

Le personnel civil et les divers moyens de transport provenant de la réquisition, y compris le matériel de chemin de fer et les bateaux utilisés pour les convois, seront soumis aux règles générales du droit des gens.

CHAPITRE VI.—*Du signe distinctif.*

ART. 18.

Par hommage pour la Suisse, le signe héraldique de la croix rouge sur fond blanc, formé par interversion des couleurs fédérales, est maintenu comme emblème et signe distinctif du service sanitaire des armées.

ART. 19.

Cet emblème figure sur les drapeaux, les brassards, ainsi que sur tout le matériel se rattachant au service sanitaire, avec la permission de l'autorité militaire compétente.

ART. 20.

Le personnel protégé en vertu des articles 9, alinéa 1er, 10 et 11 porte, fixé au bras gauche, un brassard avec croix rouge sur fond blanc, délivré et timbré par l'autorité militaire compétente, accompagné d'un certificat d'identité pour les personnes rattachées au service de santé des armées et qui n'auraient pas d'uniforme militaire.

ART. 21.

Le drapeau distinctif de la Convention ne peut être arboré que sur les formations et établissements sanitaires qu'elle ordonne

convention provides shall be respected, and with the consent of the military authorities. It shall be accompanied by the national flag of the belligerent to whose service the formation or establishment is attached.

Sanitary formations which have fallen into the power of the enemy, however, shall fly no other flag than that of the Red Cross so long as they continue in that situation.

ART. 22.

The sanitary formations of neutral countries which, under the conditions set forth in article 11, have been authorized to render their services, shall fly, with the flag of the convention, the national flag of the belligerent to which they are attached. The provisions of the second paragraph of the preceding article are applicable to them.

ART. 23.

The emblem of the red cross on a white ground and the words *Red Cross* or *Geneva Cross* may only be used, whether in time of peace or war, to protect or designate sanitary formations and establishments, the personnel and matériel protected by the convention.

CHAPTER VII.—*Application and execution of the convention.*

ART. 24.

The provisions of the present convention are obligatory only on the contracting powers, in case of war between two or more of them. The said provisions shall cease to be obligatory if one of the belligerent powers should not be signatory to the convention.

ART. 25.

It shall be the duty of the commanders in chief of the belligerent armies to provide for the details of execution of the foregoing articles, as well as for unforeseen cases, in accordance with the instructions of their respective governments, and conformably to the general principles of this convention.

ART. 26.

The signatory governments shall take the necessary steps to acquaint their troops, and particularly the protected personnel, with the provisions of this convention and to make them known to the people at large.

de respecter et avec le consentement de l'autorité militaire. Il devra être accompagné du drapeau national du belligérant dont relève la formation ou l'établissement.

Toutefois, les formations sanitaires tombées au pouvoir de l'ennemi n'arboreront pas d'autre drapeau que celui de la Croix-Rouge, aussi longtemps qu'elles se trouveront dans cette situation.

ART. 22.

Les formations sanitaires des pays neutres qui, dans les conditions prévues par l'article 11, auraient été autorisées à fournir leurs services, doivent arborer, avec le drapeau de la Convention, le drapeau national du belligérant dont elles relèvent.

Les dispositions du deuxième alinéa de l'article précédent leur sont applicables.

ART. 23.

L'emblème de la croix rouge sur fond blanc et les mots *Croix-Rouge* ou *Croix de Genève* ne pourront être employés, soit en temps de paix, soit en temps de guerre, que pour protéger ou désigner les formations et établissements sanitaires, le personnel et le matériel protégés par la Convention.

CHAPITRE VII.—*De l'application et de l'exécution de la convention.*

ART. 24.

Les dispositions de la présente Convention ne sont obligatoires que pour les Puissances contractantes, en cas de guerre entre deux ou plusieurs d'entre elles. Ces dispositions cesseront d'être obligatoires du moment où l'une des Puissances belligérantes ne serait pas signataire de la Convention.

ART. 25.

Les commandants en chef des armées belligérantes auront à pourvoir aux détails d'exécution des articles précédents, ainsi qu'aux cas non prévus, d'après les instructions de leurs Gouvernements respectifs et conformément aux principes généraux de la présente Convention.

ART. 26.

Les Gouvernements signataires prendront les mesures nécessaires pour instruire leurs troupes, et spécialement le personnel protégé, des dispositions de la présente Convention et pour les porter à la connaissance des populations.

CHAPTER VIII.—*Repression of abuses and infractions.*

ART. 27.

The signatory powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition.

ART. 28.

In the event of their military penal laws being insufficient, the signatory governments also engage to take, or to recommend to their legislatures, the necessary measures to repress, in time of war, individual acts of robbery and ill treatment of the sick and wounded of the armies, as well as to punish, as usurpations of military insignia, the wrongful use of the flag and brassard of the Red Cross by military persons or private individuals not protected by the present convention.

They will communicate to each other through the Swiss Federal Council the measures taken with a view to such repression, not later than five years from the ratification of the present convention.

General provisions.

ART. 29.

The present convention shall be ratified as soon as possible. The ratifications will be deposited at Berne.

A record of the deposit of each act of ratification shall be prepared, of which a duly certified copy shall be sent, through diplomatic channels, to each of the contracting powers.

ART. 30.

The present convention shall become operative, as to each power, six months after the date of deposit of its ratification.

CHAPITRE VIII.—*De la répression des abus et des infractions.*

ART. 27.

Les Gouvernements signataires, dont la législation ne serait pas dès à présent suffisante, s'engagent à prendre ou à proposer à leurs législatures les mesures nécessaires pour empêcher en tout temps l'emploi, par des particuliers ou par des sociétés autres que celles y ayant droit en vertu de la présente Convention, de l'emblème ou de la dénomination de *Croix-Rouge* ou *Croix de Genève*, notamment, dans un but commercial, par le moyen de marques de fabrique ou de commerce.

L'interdiction de l'emploi de l'emblème ou de la dénomination dont il s'agit produira son effet à partir de l'époque déterminée par chaque législation et, au plus tard, cinq ans après la mise en vigueur de la présente Convention. Dès cette mise en vigueur, il ne sera plus licite de prendre une marque de fabrique ou de commerce contraire à l'interdiction.

ART. 28.

Les Gouvernements signataires s'engagent également à prendre ou à proposer à leurs législatures, en cas d'insuffisance de leurs lois pénales militaires, les mesures nécessaires pour réprimer, en temps de guerre, les actes individuels de pillage et de mauvais traitements envers des blessés et malades des armées, ainsi que pour punir, comme usurpation d'insignes militaires, l'usage abusif du drapeau et du brassard de la Croix-Rouge par des militaires ou des particuliers non protégés par la présente Convention.

Ils se communiqueront, par l'intermédiaire du Conseil fédéral suisse, les dispositions relatives à cette répression, au plus tard dans les cinq ans de la ratification de la présente Convention.

Dispositions générales.

ART. 29.

La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à Berne.

Il sera dressé du dépôt de chaque ratification un procès-verbal dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances contractantes.

ART. 30.

La présente Convention entrera en vigueur pour chaque Puissance six mois après la date du dépôt de sa ratification.

ART. 31.

The present convention, when duly ratified, shall supersede the Convention of August 22, 1864, in the relations between the contracting states.

The Convention of 1864 remains in force in the relations between the parties who signed it but who may not also ratify the present convention.

ART. 32.

The present convention may, until December 31, proximo, be signed by the powers represented at the conference which opened at Geneva on June 11, 1906, as well as by the powers not represented at the conference who have signed the Convention of 1864.

Such of these powers as shall not have signed the present convention on or before December 31, 1906, will remain at liberty to accede to it after that date. They shall signify their adherence in a written notification addressed to the Swiss Federal Council, and communicated to all the contracting powers by the said Council.

Other powers may request to adhere in the same manner, but their request shall only be effective if, within the period of one year from its notification to the Federal Council, such Council has not been advised of any opposition on the part of any of the contracting powers.

ART. 33.

Each of the contracting parties shall have the right to denounce the present convention. This denunciation shall only become operative one year after a notification in writing shall have been made to the Swiss Federal Council, which shall forthwith communicate such notification to all the other contracting parties.

This denunciation shall only become operative in respect to the power which has given it.

In faith whereof the plenipotentiaries have signed the present convention and affixed their seals thereto.

Done at Geneva, the sixth day of July, one thousand nine hundred and six, in a single copy, which shall remain in the archives of the Swiss Confederation and certified copies of which shall be delivered to the contracting parties through diplomatic channels.

(Here follow the signatures.)

ART. 31.

La présente Convention, dûment ratifiée remplacera la Convention du 22 août 1864 dans les rapports entre les États contractants.

La Convention de 1864 reste en vigueur dans les rapports entre les Parties qui l'ont signée et qui ne ratifieraient pas également la présente Convention.

ART. 32.

La présente Convention pourra, jusqu'au 31 décembre prochain, être signée par les Puissances représentées à la Conférence qui s'est ouverte à Genève le 11 juin 1906, ainsi que par les Puissances non représentées à cette Conférence qui ont signé la Convention de 1864.

Celles de ces Puissances qui, au 31 décembre 1906, n'auront pas signé la présente Convention, resteront libres d'y adhérer par la suite. Elles auront à faire connaître leur adhésion au moyen d'une notification écrite adressée au Conseil fédéral suisse et communiquée par celui-ci à toutes les Puissances contractantes.

Les autres Puissances pourront demander à adhérer dans la même forme, mais leur demande ne produira effet que si, dans le délai d'un an à partir de la notification au Conseil fédéral, celui-ci n'a reçu d'opposition de la part d'aucune des Puissances contractantes.

ART. 33.

Chacune des Parties contractantes aura la faculté de dénoncer la présente Convention. Cette dénonciation ne produira ses effets qu'un an après la notification faite par écrit au Conseil fédéral suisse; celui-ci communiquera immédiatement la notification à toutes les autres Parties contractantes.

Cette dénonciation ne vaudra qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Convention et l'ont revêtue de leurs cachets.

Fait à Genève, le six juillet mil neuf cent six, en un seul exemplaire, qui restera déposé dans les archives de la Confédération suisse, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances contractantes.

(*Signatures.*)

FINAL PROTOCOL OF THE CONFERENCE FOR THE REVISION OF THE GENEVA CONVENTION.

The Conference called by the Swiss Federal Council, with a view to revising the International Convention of August 22, 1864, for the Amelioration of the Condition of Soldiers wounded in Armies in the field, met at Geneva on June 11, 1906. The Powers hereinbelow enumerated took part in the Conference to which they had designated the delegates hereinbelow named.

(Names of Countries and Delegates.)

In a series of meetings held from the 11th of June to the 5th of July, 1906, the Conference discussed and framed, for the signatures of the Plenipotentiaries, the text of a Convention which will bear the date of July 6, 1906.

In addition, and conformably to Article 16 of the Convention for the peaceful settlement of international disputes, of July 29, 1899, which recognized arbitration as the most effective, and at the same time, most equitable means of adjusting differences that have not been resolved through the diplomatic channel, the Conference uttered the following wish:

The Conference expressed the wish that, in order to arrive at as exact as possible an interpretation and application of the Geneva Convention, the Contracting Powers will refer to the Permanent Court at The Hague, if permitted by the cases and circumstances, such differences as may arise among them, in time of peace, concerning the interpretation of the said Convention.

This wish was adopted by the following States:

Germany, Argentine Republic, Austria-Hungary, Belgium, Bulgaria, Chile, China, Congo, Denmark, Spain (ad referendum), United States of America, United States of Brazil, France, Greece, Guatemala, Honduras, Italy, Luxemburg, Montenegro, Nicaragua, Norway, The Netherlands, Peru, Persia, Portugal, Roumania, Russia, Servia, Siam, Sweden, Switzerland, and Uruguay.

The wish was rejected by the following States:

Corea, Great Britain, and Japan.

In witness whereof the Delegates have signed the present Protocol.

Done at Geneva, the sixth day of July, one thousand nine hundred and six, in a

PROTOCOLE FINAL DE LA CONFÉRENCE DE REVISION DE LA CONVENTION DE GENÈVE.

La Conférence convoquée par le Conseil fédéral suisse, en vue de la revision de la Convention internationale, du 22 août 1864, pour l'amélioration du sort des militaires blessés dans les armées en campagne, s'est réunie à Genève le 11 juin 1906. Les Puissances dont l'énumération suit ont pris part à la Conférence, pour laquelle Elles avaient désigné les Délégués nommés ci-après:

(Noms des pays et des délégués.)

Dans une série de réunions tenues du 11 juin au 5 juillet 1906, la Conférence a discuté et arrêté, pour être soumis à la signature des Plénipotentiaires, le texte d'une Convention qui portera la date du 6 juillet 1906.

En outre, et en conformité de l'article 16 de la Convention pour le règlement pacifique des conflits internationaux, du 29 juillet 1899, qui a reconnu l'arbitrage comme le moyen le plus efficace et en même temps le plus équitable de régler les litiges qui n'ont pas été résolus par les voies diplomatiques, la Conférence a émis le vœu suivant:

La Conférence exprime le vœu que, pour arriver à une interprétation et à une application aussi exactes que possible de la Convention de Genève, les Puissances contractantes soumettent à la Cour Permanente de la Haye, si les cas et les circonstances s'y prêtent, les différends qui, en temps de paix, s'éléveraient entre elles relativement à l'interprétation de ladite Convention.

Ce vœu a été voté par les États suivants:

Allemagne, République Argentine, Autriche-Hongrie, Belgique, Bulgarie, Chili, Chine, Congo, Danemark, Espagne (*ad ref.*), États-Unis d'Amérique, États-Unis du Brésil, États-Unis Mexicains, France, Grèce, Guatémala, Honduras, Italie, Luxembourg, Montenegro, Nicaragua, Norvège, Pays-Bas, Pérou, Perse, Portugal, Roumanie, Russie, Serbie, Siam, Suède, Suisse et Uruguay.

Ce vœu a été rejeté par les tats Ésuivants: Corée, Grande-Bretagne et Japon.

En foi de quoi, les Délégués ont signé le présent protocole.

Fait à Genève, le six juillet mil neuf cent six, en un seul exemplaire, qui sera

single copy, which shall be deposited in the archives of the Swiss Confederation and certified copies of which shall be delivered to all the Powers represented at the Conference.

(Signatures.)

NOTE.—Signed at Geneva July 6, 1906. Ratification advised by the Senate December 19, 1906. Ratified by the President of the United States January 2, 1907.

déposé aux archives de la Confédération suisse et dont des copies, certifiées conformes, seront délivrées à toutes les Puissances représentées à la Conférence.

(*Signatures.*)